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Tinari - direct

1 Mr. Manganiello's pecuniary loss is today?

2 A. Yes, it is.

3 MR. JOSEPH: Thank you, Judge. I have no further
4 questions.

5 THE COURT: Any cross?

6 MR. ZUCKERMAN: Thank you, your Honor.

7 CROSS-EXAMINATION

8 BY MR. ZUCKERMAN:

9 Q. Good morning, Dr. Tinari.

10 A. Good morning.

11 Q. Dr. Tinari, you have received a fee for your services in
12 this matter, correct?

13 A. Yes. I've been paid for both my report and for my time
14 coming to court.

15 Q. Including the time that is spent giving testimony today,
16 correct?

17 A. Yes.

18 Q. And including your testimony that you've given here today,
19 what's your total fee in this matter?

20 A. It would be, I think, about 3,000 for the report and 2500
21 for half a day of court. It's about 5500.

22 Q. At the present time the only position that you hold is the
23 president and founder of Tinari Economics Group, is that
24 correct?

25 A. That is correct.

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1 Q. Virtually, all the work that you do as president and
2 founder of the Tinari Economics Group is to prepare reports and
3 testify on behalf of clients during litigation matters,
4 correct?

5 A. That's over 90 percent of our work, that is correct.

6 Q. In fact, in your qualifications profile it says that you've
7 given testimony in some 600 matters?

8 A. It is probably higher by now. It is probably closer to 700
9 trials and depositions.

10 Q. In virtually all the matters which you've given testimony
11 you've testified on behalf of plaintiffs in litigation,
12 correct?

13 A. For trial purposes, that's correct.

14 Q. Most of those matters, in fact, have been personal injury
15 matters, correct?

16 A. A little over half, yes.

17 Q. Now, for purposes of your opinions in this case, you have
18 assumed that Mr. Manganiello will never work again, correct?

19 A. That's correct.

20 Q. And that he can never work again, correct?

21 A. That's correct.

22 Q. And the sole basis for that assumption as set forth in the
23 report that you prepared is a single statement from a
24 psychiatrist by the name of Dr. Latif, correct?

25 A. Yes.

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1 Q. One single statement, correct?

2 A. That's a medical opinion, yes.

3 THE COURT: What's a medical opinion?

4 THE WITNESS: The opinion offered by Dr. Latif that I
5 relied upon.

6 Q. You never interviewed Dr. Latif, did you?

7 A. No.

8 Q. Never attempted to find out what her opinions were,
9 correct?

10 A. No.

11 MR. JOSEPH: Objection. He just said he read them.

12 THE COURT: I gather she wrote a report. You read the
13 report, right?

14 THE WITNESS: I did, your Honor.

15 THE COURT: Isn't that where she would put her
16 opinions?

17 THE WITNESS: Yes.

18 THE COURT: You did in fact read her opinions?

19 THE WITNESS: I did read it, yes.

20 Q. Do you have a report from Dr. Latif?

21 A. Yes.

22 Q. And with respect to Dr. Latif's conclusion, all that's set
23 forth in your report in this matter is that Anthony had not
24 been able to motivate or initiate enough strength to pursue
25 livelihood or a gainful career. These symptoms developed

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1 causally as a result of the emotional trauma he experienced,
2 correct?

3 A. Correct.

4 Q. That's all you have in your report about what Dr. Latif
5 said, correct?

6 A. That's correct.

7 Q. And you also assume in reaching your conclusions in this
8 matter that Mr. Manganiello would have been continuously
9 employed until the year 2023, correct?

10 A. Not continuously employed. He would be employed 91 and a
11 half percent of the time because I did remove periods of no
12 work life.

13 Q. So between now and the year 2023 you assume that he would
14 have been employed for 91 and a half percent of that time,
15 correct?

16 A. That is correct.

17 Q. Now, you never did any investigation -- did you ever talk
18 to Mr. Manganiello?

19 A. No.

20 Q. Never interviewed him?

21 A. No.

22 Q. You never interviewed any of his former employers, did you?

23 A. No.

24 Q. Never called Parkchester security?

25 A. No.

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1 Q. Never called the state parks police, did you?

2 A. I did not.

3 Q. You never called anyone at Parkchester to ascertain what
4 Mr. Manganiello's job performance was at Parkchester, correct?

5 MR. JOSEPH: Objection.

6 THE COURT: Sustained. Is what you did here different
7 than what you do in the other hundreds of reports that you've
8 made?

9 THE WITNESS: No, your Honor.

10 Q. You never reviewed Mr. Manganiello's performance
11 evaluations have you?

12 MR. JOSEPH: Objection.

13 THE COURT: Sustained.

14 Q. And you are aware that Mr. Manganiello testified during
15 this trial, correct?

16 A. I was told today he has already testified.

17 Q. As far as you know, Mr. Manganiello is fully ambulatory?

18 A. I assume so. He can get up from the chair, sure.

19 Q. Any reason why he can't work?

20 MR. JOSEPH: Objection. He's not a vocational expert.

21 THE COURT: I'll let him answer the question. I am
22 not clear what this expert needs to have decided or found about
23 his ambulatory ability, but here we are. It's just a
24 statistical analysis that you did.

25 THE WITNESS: It's going to the question of whether I

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1 offset his future earnings by his ability to earn, and I didn't
2 do that.

3 Q. Do you know whether Mr. Manganiello made any efforts to
4 reenter the job force?

5 A. I'm not aware of any.

6 Q. You're not aware of any that he's made, correct?

7 A. That's correct.

8 Q. And your opinion is based on the assumption that
9 Mr. Manganiello's employment would have continued with the
10 Parkchester security and the state parks police?

11 A. I did assume that, right.

12 Q. Through the years 2023, is that right?

13 A. Yes.

14 Q. 91 percent of the time, correct?

15 A. That's correct.

16 Q. And you have no knowledge as to the facts underlying the
17 criminal prosecution, correct?

18 A. No, I have no idea about that.

19 MR. ZUCKERMAN: No further questions, your Honor.

20 THE COURT: Anything, Mr. Joseph?

21 MR. JOSEPH: Two questions.

22 REDIRECT EXAMINATION

23 BY MR. JOSEPH:

24 Q. Do you commonly rely upon medical opinions of disability to
25 perform a projection?

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1 MR. ZUCKERMAN: Objection, your Honor.

2 THE COURT: Overruled.

3 A. Yes, I do.

4 Q. And, sir, you testified that he could work 61 years was the
5 average. Do people work longer than 61 years?

6 A. That's possible, certainly, sure.

7 Q. Would it be fair to say this is a conservative estimate?

8 MR. ZUCKERMAN: Objection, your Honor.

9 THE COURT: Sustained.

10 Q. Sir, in the field of economics, is past earning capacity
11 considered -- in the field of economics, why do you look at
12 past earning capacity?

13 A. Well, we look at his past track record of earnings to see
14 if he had a job and how much he was earning. And if he did,
15 that establishes a baseline for us to go forward.

16 Q. And if you're working somewhere else in a similar capacity,
17 is it fair to say he could earn a similar wage?

18 MR. ZUCKERMAN: Objection, your Honor.

19 THE COURT: I'll sustain the objection.

20 MR. JOSEPH: Nothing further, your Honor.

21 THE COURT: You're excused. Thank you.

22 (Witness excused)

23 THE COURT: What's next?

24 MR. JOSEPH: Ms. Scaccia, your Honor.

25 CHRISTINE SCACCIA,

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1 called as a witness by the Plaintiff.

2 having been duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. JOSEPH:

5 Q. Ms. Scaccia, between the calendar years 2001 and 2004,
6 where were you employed?

7 A. The Bronx district attorney's Office

8 Q. In what capacity?

9 A. Assistant district attorney.

10 Q. And did you become involved in the prosecution of the case
11 of the People of the State of New York v. Anthony Manganiello?

12 A. Yes, I did.

13 Q. And when did you first become aware that Anthony
14 Manganiello was a suspect in a shooting of Albert Acosta?

15 A. Probably, the day after the incident took place

16 Q. On the date of the incident was an Assistant district
17 attorney Dondes handling this matter?

18 A. He was the assistant on homicide duty, yes

19 Q. On February 12 or February 13 of 2001, did the Bronx
20 District Attorney's Office authorize an arrest of Anthony
21 Manganiello?

22 A. Not at that time. We deferred

23 Q. Ma'am, did you become aware of the results of any gunshot
24 residue testing performed on Anthony Manganiello's hands and
25 clothing on February 12, 2001?

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1 A. I don't know that I became aware of the results that day,
2 but at some time afterwards I did, yes.

3 Q. The question is, did you become aware of the results that
4 were performed on that day?

5 A. Yes.

6 Q. And what were the results?

7 A. They were negative.

8 Q. Ma'am, there has been some testimony in this case
9 concerning the homicide case file. Did you ever have
10 possession of the homicide case file?

11 A. Yes, I did.

12 Q. Ma'am, did you ever represent to the court that you didn't?

13 A. No.

14 Q. Let me show you --

15 THE COURT: Not this court.

16 Q. Not this court. The Bronx Supreme Court.

17 A. At some point I no longer had possession of it, correct.

18 THE COURT: I don't think that was his question.

19 MR. JOSEPH: It wasn't.

20 Q. Ma'am, did you tell Judge Marcus of the Bronx Supreme Court
21 that you never had possession of the file?

22 A. Not in that context, no.

23 Q. Ma'am, I am going to ask you to take a look at page 7 --

24 MR. ZUCKERMAN: One second, your Honor.

25 Q. -- of the hearing proceedings from the pretrial hearing on

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1 June 18, 2004?

2 A. Okay.

3 Q. Ma'am, could you please read lines 8 to 10.

4 THE COURT: The way this is supposed to be done, since
5 each of you have had your own way about it and nobody has
6 objected and I haven't said something, indeed, she should read
7 it to yourself and then you should ask her a question or you
8 can read the passage and ask her if she made that answer to
9 that question.

10 Q. Ma'am, please read the passage.

11 A. I'm sorry. Lines 8 through 10, you said?

12 Q. Correct.

13 THE COURT: What's the page number?

14 THE WITNESS: 7, your Honor.

15 Q. Have you had sufficient time to read the passage?

16 A. Yes, I have.

17 Q. Did you in fact represent in open court to Judge Marcus in
18 June of 2004 that you never had possession of the homicide case
19 file?

20 A. In the context that I was speaking, yes, I did.

21 Q. And you had a duty of candor and truthfulness to the court,
22 correct?

23 A. I'm an officer of the court, yes.

24 Q. In June of 2004, is it true that you never had physical
25 possession of the homicide case file?

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1 A. Again --

2 THE WITNESS: Your Honor, may I explain?

3 THE COURT: Sure.

4 A. At points during my involvement in the investigation I had
5 access to the homicide case file. I did not retain possession
6 of the police department homicide case file. So, no, I never
7 had full and complete possession as if I kept the folder, but I
8 had access to the folder during points of the pendency of the
9 case.10 Q. Ma'am, access means it was generally available somewhere,
11 right?

12 MR. ZUCKERMAN: Objection.

13 THE COURT: This is like cross. It's a perfectly
14 appropriate question and a follow-up and another follow-up is
15 also appropriate. Go ahead.16 A. No. At points the file was with the detective in my
17 office.

18 Q. By the way, ma'am, you're a district attorney, correct?

19 A. Correct.

20 Q. And possession means having it physically either on your
21 person or in close proximity, correct?

22 A. At the time you possess it, yes.

23 Q. And did you tell Judge Marcus in June of 2004 that you
24 never had possession of that file?

25 A. Yes. Because I never maintained possession of that file.

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1 Q. Ma'am, did you use the word maintain on page 7 of the
2 hearing transcript?

3 A. No, counselor, I didn't.

4 Q. You told Judge Marcus as an officer of the court in open
5 court four years ago, I never had possession of the file,
6 correct?

7 A. That's correct.

8 THE COURT: There has been a lot of talk about a box
9 that went missing which you may or may not know about. Is the
10 folder and the box the same item, if you know.

11 THE WITNESS: I do know, and, yes. What happens is,
12 when an investigation is started by the police department, they
13 create paperwork. It is up to the case officer to maintain the
14 paperwork, to fill out the paperwork, to collect the paperwork.

15 And during the course of this investigation, the
16 officers who worked on the case prepared paperwork, it became
17 part of the case folder, and there were other items and
18 handwritten notes and it got too big for a folder, so the
19 folder now became a box. And in this box was the police
20 department paperwork, notes, and some other items, all of which
21 were present in the beginning and throughout the grand jury
22 stages of this case, and at some point between then and the
23 trial that box became misplaced.

24 Q. By the way, ma'am, that's not the only box that became
25 misplaced, is it?

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1 A. With regards to this case?

2 Q. Yes. Where is the district attorney's file for the
3 prosecution of Anthony Manganiello presently?

4 MR. ZUCKERMAN: Objection, your Honor.

5 THE COURT: I am not sure I understand. But if you
6 can answer, you're welcome to answer. I am not sure I
7 understand the question.

8 A. The district attorney's office didn't have a box, but we
9 had a file that after the case was ended I sent to archives.

10 Q. Have you made efforts to look for that box since then?

11 A. I believe my office has made efforts, but I'm not aware of
12 what their findings or direct efforts have been.

13 Q. You made no efforts to look for the box?

14 A. I looked in my office. I don't have it and it's not a box.
15 It's a folder.

16 Q. Did you make efforts to look for the folder?

17 A. Yes.

18 Q. Have you been able to find that folder?

19 A. It's not in my office. I sent it to archives, sir.

20 THE COURT: Now I'm a little confused. The folder
21 which grew too big for a folder and became a box, you had
22 access to from time to time. And when the case was over you
23 sent it to archives, is that right?

24 THE WITNESS: Two different things, your Honor. The
25 police department paperwork was what was maintained by the

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1 detectives that became a box and kept at the precinct until
2 last we saw it. And then the DA's office has their own folder
3 which would include our paperwork, minutes, copies of reports.

4 THE COURT: Indictment and things like that?

5 THE WITNESS: Correct.

6 Q. Ma'am, did you not attempt to look for this box, even in
7 archives?

8 A. I have made requests of my office to ask where the folder
9 has been and to order it from archives. I have not followed up
10 on that myself, counselor.

11 Q. That's been since May of this year, May 2 of this year?

12 A. Probably when we were contacted about me appearing, yes.

13 Q. By the way, ma'am, did Detective Agostini ever provide you
14 with all of that handwritten interview and investigative notes
15 from the file, not the DD5s, but the handwritten investigative
16 notes?

17 A. When you say provide me, counselor, I have seen them and I
18 have seen them in his possession while we were presenting the
19 case. Did I make copies of them and, therefore, preserve them
20 on my own, no, but, yes, he did provide me with them at one
21 point.

22 Q. Did he give you copies for you to maintain as part of your
23 file?

24 A. No.

25 Q. Ma'am, what obligations, if any, does a district attorney

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1 have to provide copies of handwritten statements and
2 investigative notes to a person who is accused of a crime?

3 MR. ZUCKERMAN: Objection, your Honor.

4 THE COURT: If she is knows, it is interesting, we
5 will be glad to listen. Overruled.

6 A. As a district attorney I have an obligation to provide any
7 and all paperwork that's created as part of any investigation.
8 Most importantly, statements made by witnesses, handwritten
9 notes taken or made by witnesses, because at some point in time
10 when a prosecution or a case would go to trial, obviously, the
11 accused has a right to confront witnesses with what they have
12 said on prior occasions. Those are reports, they are
13 handwritten notes, they are scientific labs, there are minutes
14 from other proceedings.

15 And what happens is, we would make copies and turn
16 them over to the defense in a case. In this case police
17 reports were made copies of, and I did turn them over to
18 defense. Between the time that was turned over and the time
19 the case went to trial, we lost the police file. It could not
20 be found within the precinct. So when the case actually went
21 to trial, I had to try the case based on the copies of the
22 reports I had originally provided to defense counsel.

23 Q. Did you ever provide the handwritten notes, the
24 investigative notes, the statements, the crime lab reports to
25 Mr. Manganiello's defense lawyer?

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1 A. Mr. Manganiello's defense attorney was provided with
2 everything that I had originally provided. I turned over --

3 Q. That wasn't the question, ma'am.

4 MR. JOSEPH: Judge, she is giving me an evasive
5 answer. I would like a clear answer to my question.

6 THE COURT: The problem is, it's fairly clear from the
7 testimony here that there were handwritten notes, perhaps memo
8 book entries and perhaps other spiral notebook entries that
9 apparently never appeared or indeed never were given to the
10 defense attorney because you didn't have them. That's what
11 he's asking about. Do you have a recollection of that
12 happening?

13 THE WITNESS: Yes. There were notes that were not
14 turned over because by the time I went to turn them over the
15 file had been lost and, therefore, I could not turn them over.

16 Q. After you asked Mr. Agostini to provide you with copies so
17 you could provide them to Mr. Manganiello's defense lawyers,
18 correct?

19 A. I'm sorry. Repeat that, sir.

20 Q. At the point in time these notes disappeared you had asked
21 Mr. Agostini to provide you with copies so that you could in
22 turn provide them to Mr. Manganiello's criminal defense lawyer,
23 correct?

24 A. No. At some point I had asked Detective Agostini to bring
25 the folder down to me so I could make copies and it was at that

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1 point that we became aware that we could not find the folder.

2 Q. When was that?

3 A. I don't have any recollection of that date, sir.

4 THE COURT: Before the trial?

5 THE WITNESS: It was before the trial because that's
6 what I'm obligated to do before the trial.

7 Q. Is there any reason why these typewritten DD5s were
8 preserved and turned over but all the handwritten notes weren't
9 given to the defense lawyer at the same time?

10 A. It's a matter of, quite frankly, convenience. The stuff
11 that was prepared and ready to be easily copied and turned over
12 to defense was turned over first. And well before we got to
13 the trial we tried to make attempts to turn over the remainder
14 of the file, but at that point the file had become lost.

15 Q. Ma'am, the case against Anthony Manganiello was pending for
16 three years before it went to trial, correct?

17 A. That is about the average time of pendency for a murder
18 case in the Bronx, sir, yes.

19 Q. Is that a yes to my question?

20 A. Yes it is.

21 Q. And in the three years or three plus years, between the
22 time this matter was commenced, the criminal matter was
23 commenced and the time of trial, the handwritten investigative
24 notes were never provided to Mr. Manganiello's criminal
25 attorney, isn't that right?

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1 A. Yes.

2 Q. Ma'am, did you present a case to the grand jury of the
3 State of New York, Bronx County, against Anthony Manganiello?

4 A. Yes, I did.

5 Q. Can you explain to the jury what role, if any, the grand
6 jury proceeding has in -- let me rephrase that.

7 Ma'am, can a murder prosecution go forward in a local
8 court?

9 A. When someone is arrested on the charge for murder, that is
10 actually the highest felony you can be charged with. When
11 someone is taken into custody, the district attorney's office
12 has approximately 120 hours to put evidence before a grand jury
13 panel to offer the accused an opportunity to call witnesses or
14 testify, and then in the end be prepared to vote charges.

15 So a grand jury panel is a body of 16 to 23 people
16 from Bronx County who listen to the evidence and then in the
17 end are asked to decide if there is reasonable cause to believe
18 that the suspect of that investigation committed the crimes
19 charged. So that's what a grand jury is.

20 Q. And does a grand jury indictment provide jurisdiction to
21 the county level criminal court?

22 A. It's the county level Supreme Court.

23 Q. County level Supreme Court?

24 A. Yes.

25 Q. Is it fair to say without a grand jury indictment there is

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1 no jurisdiction in county level Supreme Criminal Court for a
2 felony?

3 MR. ZUCKERMAN: Objection, your Honor.

4 THE COURT: I am not sure I care about that. I'll
5 sustain the objection.

6 When does the criminal complaint get filed?

7 THE WITNESS: The criminal complaint is an affidavit
8 by the arresting officer or the victim in a case which is filed
9 upon the arrest of an individual, and that is what starts the
10 criminal process.

11 Q. And is that criminal process started in a local criminal
12 court?

13 MR. ZUCKERMAN: Objection.

14 THE COURT: Overruled.

15 A. Yes.

16 Q. And does the grand jury in an indictment in effect remove
17 the case from a local criminal court and bring it to the county
18 Supreme Court?

19 MR. ZUCKERMAN: Objection, your Honor.

20 THE COURT: That's sort of interesting to know that,
21 so I'll let you answer it.

22 A. What happens when the criminal court complaint is filed,
23 the person is brought before a judge for the first time. At
24 that point in time the accused is arraigned. The judge would
25 ask them or inform them of the charges and ask them if they

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1 plead guilty or not guilty, ask them if they wanted to testify
2 at a grand jury proceeding, and the person would, most
3 importantly, be assigned an attorney or have an attorney hired
4 to represent them.

5 Once that is invoked and the person is arraigned, that
6 is now what triggers the now 120 hours to go before a grand
7 jury and seek an indictment. The criminal court maintains
8 control of that case until an indictment is voted, and then
9 when it comes time if a person is indicted to be arraigned on
10 the indictment, that's when it moves to a Supreme Court level.

11 Q. And isn't it true that without an indictment the Supreme
12 Court does not have jurisdiction on a felony complaint?

13 MR. ZUCKERMAN: Objection.

14 THE COURT: I am not sure -- we will listen to you.

15 A. I am not sure that that's correct either.

16 THE COURT: I'll sustain the objection.

17 Q. Did a gentleman named Harry Plaza ever testify before the
18 grand jury?

19 A. Harry --

20 Q. Plaza.

21 A. No.

22 Q. Do you have any memory of a Harry Plaza as you sit here
23 right now?

24 A. No, I don't.

25 Q. Did a Harry Plaza testify at trial?

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1 A. Not that I recall.

2 Q. If Mr. Plaza had information that you considered relevant
3 on whether or not Mr. Manganiello committed a crime, would you
4 have presented him to the grand jury or called him as a trial
5 witness?

6 MR. ZUCKERMAN: Objection.

7 THE COURT: Overruled.

8 A. I'm a little uncertain how to answer that question because
9 I'm not sure who this individual is and what they would have to
10 say, but, obviously, if somebody has relevant information I'm
11 at least going to listen to them and consider whether or not I
12 am going to present them at trials.

13 Q. As you sit here right now, do you have a recollection of
14 ever meeting with a Harry Plaza?

15 A. No.

16 Q. Did you base your decision to present a case to the grand
17 jury on the witnesses which Mr. Agostini provided you?

18 A. I based my decision to put this case into the grand jury
19 based on my interview of the witnesses I was provided with.

20 Q. And the witnesses were provided to you by Mr. Agostini,
21 correct?

22 A. Well, when you say provided, the witnesses came to light
23 because of the police investigation. So we were supplied names
24 and addresses and sum and substance of what individuals said
25 based on police reports. So in that respect, yes, Detective

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1 Agostini brought them to me.

2 Q. Did Mr. Agostini ever make you aware that Walter Cobb had
3 made inconsistent statements on February 12, 2001?

4 A. I was informed on either written or oral form about all of
5 Mr. Cobb's statements before I myself interviewed him and put
6 him before the grand jury and called him at trial.

7 Q. Ma'am, did you give a different answer approximately a
8 month ago, month and a half ago?

9 A. Sir, I don't know exactly what that means. If you have
10 somewhere that you'd like me to look, I'd be happy to do so.

11 Q. Let me ask you this, ma'am. Were you made aware, on
12 February 12 or 13, when you took over the file, of any
13 inconsistent statements made by Mr. Cobb?

14 A. Counsel, I don't have an independent recollection of that.
15 I know I reviewed reports concerning Mr. Cobb and that I
16 interviewed Mr. Cobb. But as I sit here today I don't
17 remember.

18 Q. Ma'am, let me ask you this. About a month or so ago did we
19 ask this question and did you give this answer on page 31 of
20 your deposition, line 18:

21 "Q. Were you made aware" --

22 THE COURT: Do you remember having given a deposition?

23 THE WITNESS: Yes, I do, sir.

24 Q. "Were you made aware on February 12 or 13 of any
25 inconsistent statements by Walter Cobb?

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1 "A. No."

2 A. Okay.

3 Q. Were you asked those questions and did you give that
4 answer?

5 A. I'm sure I did, counselor. You're reading it.

6 THE COURT: If you sat through trial, you wouldn't be
7 sure.8 Q. Were you ever made aware that Mr. Cobb initially said he
9 heard shots that sounded like they came from outside the
10 building?11 A. I don't recall that, no. I recall Mr. Cobb saying he was
12 outside the building when he heard shots.13 Q. And by the way, did you review your deposition testimony
14 before coming here today?

15 A. A while back, yes, I did.

16 Q. When was that?

17 A. Probably, last Friday. I think, last Friday.

18 Q. And were you ever made aware that Mr. Cobb initially told
19 Alex Perez he only heard one shot?

20 A. I don't recall that.

21 Q. That would be different than what he testified to before
22 the grand jury, correct?

23 MR. ZUCKERMAN: Objection.

24 Q. If you need to refresh your recollection, I can show you
25 the minutes.

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1 THE COURT: Overruled.

2 A. Show me the minutes as to what?

3 Q. Mr. Cobb's testimony before the grand jury.

4 A. I recalled Mr. Cobb's testimony before the grand jury.

5 Q. Did he say he heard more than one shot?

6 A. Yes, he did.

7 Q. By the way, did Mr. Cobb testify before the grand jury
8 that immediately after hearing the shots he saw plaintiff
9 coming out of the basement of 1700 Metropolitan Avenue?

10 A. He testified -- my concern is your use of the term
11 immediately.

12 Q. Within a couple of seconds?

13 A. Yes.

14 Q. Did Alex Perez ever tell you that Mr. Cobb initially told
15 him that he saw Mr. Manganiello five minutes after hearing the
16 shots?

17 A. As I sit here today, I don't recall that, but all of those
18 witnesses were part of the same presentation, part of the same
19 trial.

20 Q. And did Mr. Huello testify before the grand jury?

21 A. No.

22 Q. Was there an inconsistency between what Mr. Huello said
23 what happened and what Mr. Cobb said happened?

24 A. As I sit here today, I don't know, but that's not out of
25 the ordinary, counselor.

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1 Q. But Mr. Cobb testified before the grand jury, correct?

2 A. Yes.

3 Q. Mr. Huello did not, correct?

4 A. Yes.

5 Q. By the say, did a Sergeant Ohle testify before the grand
6 jury?

7 A. No, he did not.

8 Q. Were you aware at the time that Mr. Ohle had made a
9 broadcast over the Parkchester radio that one of his men was
10 down?

11 A. I know that Sergeant Ohle made that broadcast, but when
12 that broadcast was made is, to my understanding, not immediate.

13 Q. Isn't it true that he made that broadcast before plaintiff
14 arrived on the scene?

15 A. It may have been. I don't recall the exact timing of it,
16 but it was not immediately known who the victim of this
17 homicide was.

18 Q. But it was known within a very short period of time after
19 Ohle responds that the victim is a Parkchester security
20 officer, correct?

21 A. It's known relatively quickly. You have officers
22 responding, you have a person on the ground suffering from
23 gunshot wounds who is in full uniform, so, yes, that
24 information is disseminated fairly quickly.

25 Q. In fact, isn't it true that Sergeant Ohle put a call over

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1 the Parkchester radio on an open line that it was one of his
2 men was down before Anthony Manganiello ever arrived on the
3 scene?

4 A. Again, that information was disseminated, but I also know
5 that they -- Parkchester security was trying to send the
6 deceased to his own body. So when it initially came over,
7 there was an officer down, but they were trying to send Officer
8 Acosta, not realizing it was Officer Acosta that was down. So
9 there was information being disseminated and it was happening
10 quickly, as you can imagine. But when that came, as I sit here
11 today, exactly in relation to when he got to the scene, I don't
12 know.

13 Q. Let me show you this, Exhibit 25 in evidence.

14 MR. ZUCKERMAN: One second, please.

15 Q. Isn't this one of the DD5s you had in your possession?

16 MR. ZUCKERMAN: One second.

17 Q. Isn't Exhibit 25 one of the DD5s you had in your
18 possession?

19 A. This is a DD5 pertaining to this case. If I just may -- I
20 am sure I had it in my possession. I would just like to read
21 what it says if you don't ask me a question about it.

22 Go ahead, sir.

23 Q. Doesn't this contain a statement made by Sergeant Ohle on
24 the day of Albert Acosta's murder?

25 A. Yes.

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1 Q. Doesn't it say that he put down over the radio, one of my
2 men is down, before Anthony Manganiello ever arrived on the
3 scene?

4 A. One of his men were down, yes.

5 Q. That would mean anybody listening to that would know that a
6 Parkchester security officer was down, right?

7 MR. ZUCKERMAN: Objection.

8 THE COURT: Sustained.

9 Q. Did you ever bring that fact to light before the grand
10 jury?

11 MR. ZUCKERMAN: Objection.

12 THE COURT: Sustained.

13 Q. Was the grand jury ever informed that Sergeant Ohle had put
14 a transmission over the Parkchester radio identifying the
15 victim as a Parkchester security officer?

16 MR. ZUCKERMAN: Objection.

17 THE COURT: You can tell us if you recall. I don't
18 find it terribly upsetting.

19 A. I know it didn't come out through Sergeant Ohle making a
20 statement. If it came out peripherally, I don't remember, by
21 someone saying the Parkchester officer was down. I don't
22 recall. It came out specifically. I know Sergeant Ohle didn't
23 testify. I can tell you that.

24 Q. And let me show you Exhibit No. 11, ma'am. Wasn't it also
25 true that there was a radio broadcast from central NYPD to the

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1 cars that a possible security was shot at the location?

2 MR. ZUCKERMAN: Your Honor, I object.

3 THE COURT: I'll allow it.

4 A. You've handed me what I recognize to be what's called a
5 Sprint report, which is when radio broadcasts are made by
6 police officers or people call 911, it ends up in the
7 typewritten printout. And I believe this is an NYPD Sprint
8 report and, yes, it does indicate that a possible Parkchester
9 officer is down, but I don't believe that Parkchester security
10 is on NYPD frequency.

11 Q. Isn't it also true that NYPD officers, such as defendant
12 Miriam Nieves and Alex Perez, are on an NYPD frequency?

13 A. I would imagine that's why they went to the location,
14 because there was somebody shot there.

15 Q. What they heard was it was a possible Parkchester security
16 officer that was shot?

17 MR. ZUCKERMAN: Objection, your Honor.

18 THE COURT: I'll allow it.

19 A. Yes.

20 Q. Now, did you elicit testimony before the grand jury that
21 was from Ms. Nieves that was -- that there was no transmission
22 identifying the victim as a Parkchester security officer?

23 A. I don't understand your question.

24 Q. Did Ms. Nieves testify before the grand jury that there was
25 no transmission identifying their victim as a Parkchester

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1 security officer? Let me show you the testimony, if you'd
2 like, to refresh your recollection.

3 A. No. I would like the Court's permission to explain because
4 I don't believe I can answer that with a yes or no.

5 THE COURT: You have a choice. You can rephrase the
6 question so maybe she can answer it, or we are going to let her
7 go on?

8 MR. JOSEPH: I'll rephrase the question.

9 Q. Ma'am, did Ms. Nieves testify that prior to her arriving on
10 the scene there was no radio transmission that identified the
11 victim as a Parkchester security officer?

12 A. I believe Officer Nieves' testimony was that prior to going
13 in there and making personal observations that it was unclear
14 who the victim was. I don't believe there was any testimony
15 indicating there was never a transmission. It was based on
16 what the officer knew when the officer entered the location.

17 Q. Ma'am, let me ask you this. Did you testify about a month
18 and a half ago, on page 75, line 22 of your deposition:

19 "Q. Now, did you elicit testimony from an Officer Nieves that
20 when Mr. Manganiello arrived it was unknown that the victim was
21 a Parkchester security guard?

22 "A. If that's what Officer Nieves' testimony states, that was
23 according to her."

24 Correct? That was the answer to the question,
25 correct?

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1 A. Yes. That's not what you were just asking me about.

2 Q. Ma'am, did you ever inform the grand jury or bring it to
3 their attention that in fact a radio transmission over the NYPD
4 radio did identify the victim as a Parkchester security
5 officer?

6 A. No.

7 Q. Let me ask you, isn't it true that both Officers Nieves and
8 Perez testified before the grand jury that at the point in time
9 when they respond to the location they don't know whether it's
10 an NYPD officer or Parkchester security before the grand jury?

11 A. Yes.

12 Q. At no point did you ever inform the grand jury that there
13 was in fact a radio transmission identifying the victim as a
14 Parkchester security guard?

15 MR. ZUCKERMAN: Objection, your Honor.

16 THE COURT: Overruled.

17 A. First of all, according to the transmission that you showed
18 me, it's possible. There is no affirmative unequivocal
19 statement that there is a Parkchester security officer down.
20 They know that they have a uniformed individual laying on the
21 ground in the basement in Parkchester. That is what is known.
22 That is the way things are phrased, possible male shot,
23 possible male DOA, that's the way it comes over. It was a
24 possibility. What the officers knew in their heads when they
25 responded there, only they can answer.

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1 Q. Isn't it true that the only information they had was that
2 it was a possible Parkchester security officer?

3 A. I don't even know if that information got out before they
4 arrived at the scene. At some point that information is
5 disseminated. They were responding to a male shot in the
6 basement.

7 Q. Ma'am, isn't it also true that they testified not that
8 there was a possibility that the victim was a Parkchester
9 security guard, but there was no transmission which identified
10 the victim as a Parkchester security guard?

11 A. Sir, there could have been a hundred transmissions. If
12 they didn't hear it, it couldn't have affected them.

13 Q. You knew they had radios, right?

14 A. Yes, police officers carry radios, yes.

15 Q. Isn't it also true, ma'am, that you elicited testimony from
16 Mr. Nieves concerning a statement that Mr. Manganiello made?

17 A. Yes.

18 Q. What is the purpose of that statement?

19 MR. ZUCKERMAN: Objection, your Honor.

20 THE COURT: Sustained.

21 Q. Was the purpose of the statement which Ms. Nieves testified
22 to to establish that Mr. Manganiello had some knowledge he
23 couldn't have otherwise had unless he was involved in the
24 homicide?

25 MR. ZUCKERMAN: Objection.

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1 THE COURT: If you understand, you can answer it.

2 A. Okay. Let me put it this way, counselor. The statement
3 that Mr. Manganiello made to the officer was one in a series of
4 the circumstances that I feel is relevant to this
5 investigation.

6 Q. Now, even if he did make that statement, had there been a
7 broadcast that the victim was a Parkchester security guard over
8 the Parkchester radio, that statement would no longer have any
9 relevance, would it?

10 A. No, that's not true.

11 Q. Ma'am, on the morning of February 12, 2001, were you aware
12 that Mr. Manganiello was in the company of two to three police
13 officers while he was at 1700 Metropolitan Avenue?

14 A. I'm sorry. Say that question again, please.

15 Q. Sure. On the morning of February 12, 2001, were you aware
16 that Mr. Manganiello was in the company of Police Officers
17 Ortiz and Rodriguez while he was at the call at 1700
18 Metropolitan Avenue, apartment 5E?

19 A. That was earlier in the morning.

20 Q. That's what I was asking.

21 A. You asked me that morning. I wanted to be clear. My
22 understanding was earlier that morning he responded to some
23 kind of domestic dispute at another location and that job had
24 come to an end.

25 Q. He was at that call from approximately 8:40 a.m. until

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1 about 9:05 a.m., correct?

2 A. I don't remember the exact time, sir, but I know it was
3 preceding the incident that brings us here today.

4 Q. You said it was preceding the incident. Were you there?

5 A. No, but --

6 Q. Do you have any personal knowledge of what time Albert
7 Acosta was actually shot?

8 A. Counsel, you just asked me if I was aware of where he was,
9 and I am answering you no. I wasn't there when you asked me
10 either. I was saying this based on the people that I
11 interviewed.

12 Q. And one of those people was Mr. Richard Huello, correct?

13 A. At some point I did speak with Mr. Richard Huello.

14 Q. And Mr. Huello says he gets to the basement at about 9:20
15 or so, correct?

16 A. I don't recall the times as I sit here today.

17 Q. Do you have a memory of Mr. Huello saying that when he
18 arrives at 1700 Metropolitan Avenue he hears a Parkchester
19 radio, knocks on the door and gets no response? Do you have a
20 memory of that?

21 A. No.

22 Q. By the way, did Police Officers Ortiz or Rodriguez ever
23 testify before the grand jury?

24 A. No.

25 Q. Did Mr. Manganiello's criminal defense attorney ask you to

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1 produce them for trial during the criminal trial?

2 A. I don't have a recollection, but if he asked me to I would
3 have been obligated to do so, sir.

4 Q. Let me show you page 690 of the trial transcript --

5 MR. ZUCKERMAN: Note my objection, your Honor.

6 THE COURT: I'll allow it.

7 Q. -- to refresh your recollection. Page 690 and 691. Why
8 don't you read it to yourself, ma'am.

9 THE COURT: It's a yes or no question. Either it
10 refreshes your recollection or it doesn't.

11 A. It refreshes my recollection as to what?

12 Q. Whether or not Mr. Manganiello's criminal defense attorney
13 asked you to have Officers Rodriguez or Ortiz appear at trial.

14 A. He asked for my assistance, yes.

15 Q. And did you represent to the Court that you could not find
16 Officer Rodriguez?

17 MR. ZUCKERMAN: Objection, your Honor.

18 THE COURT: I'll allow it. You can answer.

19 A. Did I represent to the Court that I what?

20 Q. Was unable to locate or identify Officer Rodriguez.

21 A. What I indicated to the Court was after counsel made the
22 request of me, which we do as a courtesy to try to move things
23 along, is bring police officers in since we have more access to
24 them, is that I made attempts and that there was only one
25 Rodriguez that I could find and I didn't know if that was him.

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1 Q. Were you aware that Eric Rodriguez testified in this trial
2 on Monday?

3 A. This trial, I have no idea.

4 MR. ZUCKERMAN: Objection.

5 THE COURT: Overruled.

6 Q. Ma'am, did you base in part your decision to present the
7 case to the grand jury against Anthony Manganiello on the
8 statements made to you by Michael Booth?

9 A. Michael Booth was not involved in the grand jury
10 presentation, no.

11 Q. Did you base your decision in part to continue a
12 prosecution against Anthony Manganiello for murder based in
13 part on what Mr. Booth told you?

14 A. No.

15 Q. Did you feel that Mr. Booth had relevant information that
16 was passed on to you by Mr. Agostini?

17 A. I believe Mr. Booth testified at the trial. So at some
18 point I put him on as a witness, but not at the grand jury
19 stage.

20 Q. I didn't ask the grand jury stage. I meant in general in
21 the prosecution did you base your decision to continue the
22 prosecution in part on what Mr. Michael Booth had told you?

23 MR. ZUCKERMAN: Objection.

24 THE COURT: Overruled.

25 A. Every witness is a part of the case. But is Michael Booth

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1 the reason that I prosecuted Mr. Manganiello for homicide, no.

2 Q. Was he one of the reasons you prosecuted Mr. Manganiello?

3 A. As I said, every witness is a reason to go forward in some
4 capacity, however great or small.

5 Q. Did Detective Agostini ever tell you that Mr. Booth was a
6 loan shark for a bookie?

7 A. I believe the information about Mr. Booth's criminal
8 activity came to me from Mr. Manganiello's attorney, who also
9 represented him.

10 Q. Is that a no?

11 A. Meaning Mr. Booth.

12 Q. Is that a no?

13 A. I don't remember who it came from, sir. I was made aware
14 of it.

15 Q. Were you made aware of it by Detective Agostini?

16 A. If he had a criminal past?

17 Q. If he was actively working as a bookie or a loan shark.

18 A. I don't remember.

19 Q. Did Mr. Agostini ever tell you that he searched Mr. Booth,
20 found a knife, and gambling materials with names and amounts
21 owed?

22 A. I don't recall that.

23 Q. Did Mr. Agostini ever tell you that Mr. Booth was at first
24 reluctant to talk to him at all?

25 A. That would not surprise me at all, but I don't recall that

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1 either. Witnesses are usually reluctant.

2 Q. Especially those engaged in criminal activity, correct?

3 MR. ZUCKERMAN: Objection, your Honor.

4 THE COURT: Sustained.

5 Q. Were you ever informed that either Detective Agostini --
6 that he told Mr. Booth that he was going to pass his name onto
7 organized crime?

8 A. I would assume if Mr. Booth was working as a bookie, he was
9 in contact with organized crime himself.

10 Q. Well, did Mr. Agostini ever tell you that he told Mr. Booth
11 that he would pass his name onto the department in the NYPD
12 that investigates organized crime?

13 A. No.

14 Q. Did Mr. Agostini ever tell you that the gambling materials
15 he found on Mr. Booth's person disappeared after he signed a
16 statement?

17 MR. ZUCKERMAN: Objection, your Honor.

18 A. I'm sorry. Repeat that.

19 THE COURT: I am going to sustain the objection.

20 Q. Immediately prior to a witness giving a statement, evidence
21 of a crime was found on him, is that something a defense
22 attorney has a right to know about?

23 MR. ZUCKERMAN: Objection, your Honor.

24 THE COURT: Sustained.

25 Q. Are you familiar with what's commonly known as a Brady

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1 obligation?

2 MR. ZUCKERMAN: Objection, your Honor.

3 THE COURT: Overruled.

4 A. Yes, I am, counselor.

5 Q. What is a Brady obligation?

6 A. As an assistant district attorney we have an obligation to
7 turn over information to defense counsel as soon as it becomes
8 known to us. Obviously, we have to turn over the information
9 we are using to inculpate their clients. But when there is
10 information that comes to our attention that tends to exculpate
11 their clients, meaning their clients did not do what they are
12 being accused of, we have an obligation to turn that over.13 Q. Does that obligation also include evidence that undermines
14 the credibility of prosecution witnesses?

15 MR. ZUCKERMAN: Objection, your Honor.

16 THE COURT: Sustained.

17 Q. Did you ever authorize Detective Agostini or any other
18 detective to withhold criminal charges against Mr. Booth in
19 exchange for a statement implicating the plaintiff?

20 MR. ZUCKERMAN: Objection.

21 THE COURT: I'll allow her to answer it.

22 A. Absolutely not.

23 Q. Did Mr. Booth testify at trial?

24 A. I believe he did.

25 Q. And did Mr. Cobb testify at trial?

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1 A. Mr. Cobb?

2 Q. Yes.

3 A. Yes.

4 Q. And was Anthony Manganiello found not guilty of all
5 charges?

6 A. Yes.

7 Q. What charges was he tried on?

8 A. I know murder in the second degree was the top count
9 submitted to the jury. I believe there would have been a
10 manslaughter charge and perhaps criminal possession of a
11 weapon. That's my best recollection as I sit here now.12 Q. By the way, was Mr. Booth ever charged with any criminal
13 activity after he testified against Mr. Manganiello?

14 MR. ZUCKERMAN: Objection, your Honor.

15 MR. JOSEPH: To your knowledge.

16 A. I have no idea.

17 Q. And was Terrence Alston another person who testified before
18 the grand jury?

19 A. Yes, he was.

20 Q. And did he give testimony to the grand jury that Anthony
21 Manganiello had asked him to kill a fellow security guard?

22 A. Yes, he did.

23 Q. Were you aware that he never made that statement to his
24 handler, Derrick Parker?

25 A. Counselor, the only way I found out about Mr. Alston was

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1 through law enforcement, so at some point Mr. Alston said that
2 to somebody before it was brought to my attention.

3 Q. That wasn't my question, ma'am. My question was, were you
4 aware that when Terrence Alston first spoke with his handler,
5 Derrick Parker, he didn't say that Anthony Manganiello tried to
6 hire him to kill another security guard?

7 A. I don't know that.

8 Q. Are you aware that Mr. Parker testified to that effect here
9 yesterday?

10 MR. ZUCKERMAN: Objection, your Honor.

11 THE COURT: Sustained.

12 Q. By the way, ma'am, did you ever become aware that Terrence
13 Alston had lied to Detective Agostini?

14 A. I would ask you to be more specific about what you're
15 saying he lied about.

16 Q. Is it a difficult question?

17 THE COURT: She would like you to be more specific.
18 Can you be more specific, Mr. Joseph, or not?

19 MR. JOSEPH: Certainly, your Honor.

20 Q. Did Mr. Agostini ever tell you that Terrence Alston ever
21 lied about a person named Johnny Baker selling him a .22
22 caliber gun?

23 A. Mr. Alston did not lie about the existence of that person.
24 Mr. Alston did not tell the detective the person's true name
25 because he did not want to get that person involved, so he told

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1 him something else originally or he said Johnny Baker -- let me
2 just do it again.

3 Mr. Alston told Detective Agostini about the existence
4 of this other individual. When he first tells Detective
5 Agostini about this other individual, he doesn't give Detective
6 Agostini that person's true name because he didn't want that
7 person to become involved. At some point later in the
8 investigation we realized that Johnny Baker isn't really called
9 Johnny Baker, his name was something else, but there was in
10 fact that person that existed.

11 Q. And that person who existed also admitted to lying,
12 correct?

13 A. Again, when you say lying, give me -- you're talking about
14 in general or you're talking about a specific incident? I
15 don't know that you can deem a lawyer across the board.

16 Q. Did that person, a Mark Damon, who you say is the real
17 person, ever recant the statement that he sold Anthony
18 Manganiello a .22 caliber gun?

19 A. By the time Mark Damon --

20 Q. It's a yes or no question, ma'am.

21 A. Just before trial, yes, that's what he said.

22 Q. By the way, was there any witness or any name that Terrence
23 Alston ever gave you who didn't recant the story?

24 MR. ZUCKERMAN: Objection, your Honor.

25 THE COURT: Overruled.

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1 A. Counsel --

2 Q. Was there ever a real person?

3 MR. ZUCKERMAN: She was trying to answer.

4 THE COURT: She was, so we will let her.

5 MR. JOSEPH: Very well, your Honor.

6 A. You're making it sound like there was 30 people that
7 Terrence Alston named. Terrence Alston spoke about one other
8 individual. And by the time this case went to trial, Terrence
9 Alston was dead and the kid, Mark Damon, if that's his full
10 name, recanted his story, to the point I was not comfortable
11 putting him on the stand.

12 Q. Did you represent to the Court that Mr. Damon was a lawyer
13 and if you put him on the stand you were concerned about the
14 possibility of suborning perjury?

15 MR. ZUCKERMAN: Objection, your Honor.

16 THE COURT: Sustained.

17 Q. Ma'am, isn't it true that Terrence Alston never provided a
18 witness who said that Anthony -- he sold Anthony Manganiello a
19 gun and did not recant his story?

20 MR. ZUCKERMAN: Objection, your Honor.

21 THE COURT: You can answer it. Go right ahead. If
22 you can't, you can't.

23 THE WITNESS: Your Honor, he's making it sound like
24 there is more than one individual, and there is not.

25 THE COURT: On the basis of the one individual, I

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1 gather --

2 THE WITNESS: The one person he provided his name
3 with, by the time the case went to trial, that kid was
4 recanting his story, meaning he was backing off his story in
5 one respect to the other, to the degree I don't know. But I
6 have an obligation to put people on the stand who have reason
7 to believe are telling me the truth, and at that point in time
8 it was my professional and ethical decision not to put this kid
9 on the stand because I didn't know what was the truth from him
10 anymore.

11 Q. Ma'am, when Terrence Alston provided the name of Johnny
12 Baker, that was a lie, was it not?

13 MR. ZUCKERMAN: Objection.

14 THE COURT: Overruled.

15 A. The name Johnny Baker was a lie, yes.

16 Q. Did you present a witness to the grand jury with knowledge
17 that he had lied?

18 THE COURT: She isn't on trial here, Mr. Joseph.

19 MR. JOSEPH: Judge, I think we have to establish
20 certain things as part of your charge --

21 THE WITNESS: Can I explain again?

22 THE COURT: Sure.

23 A. Mr. Terrence Alston was a criminal. Sad to say, he has now
24 passed on. He was a criminal. He was engaged in criminal
25 activity and he testified before a grand jury in the Bronx

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1 County that he was approached by Mr. Manganiello to kill
2 another security guard. Mr. Alston did not -- he did lie about
3 Johnny Baker being Johnny Baker as opposed to Mark Damon, but
4 Mr. Alston did that to protect the kid's identity and not get
5 him involved in a police investigation. Mr. Alston, to my
6 knowledge, back then and as I sit here before you today, did
7 not lie about anything material having to do with this homicide
8 investigation.

9 Q. Would you consider someone selling --

10 A. I don't even believe I asked him about Johnny Baker's name
11 in the grand jury, so that would not be a lie in front of the
12 grand jury.

13 Q. Would you consider a statement that somebody sold somebody
14 a gun of the same caliber weapon used in a murder to be
15 relevant --

16 MR. ZUCKERMAN: Objection, your Honor.

17 Q. -- or material?

18 THE COURT: Overruled.

19 A. At some point the information is relevant and material, but
20 Mr. Alston was put before the grand jury because Mr. Alston had
21 to say that Mr. Manganiello tried to hire him to kill another
22 Parkchester security guard, that Mr. Manganiello provided him
23 with keys to a basement area that tenants who lived in
24 Parkchester would not have access to in order that Mr. Alston,
25 at the time and date to be set at some other occasion, would be

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1 able to gain access into the basement when Mr. Manganiello
2 would lure the victim. And I believe the address that
3 Mr. Alston testified that this was going to happen at some
4 future date was 1700 Metropolitan Avenue.

5 Q. That was after you spoke with detectives from the 43rd
6 Precinct, including Detective Agostini, correct?

7 A. Mr. Alston reached out to law enforcement. Law enforcement
8 did not go --

9 Q. Please answer the question yes or no.

10 A. Was the testimony after he spoke to officers, absolutely.

11 Q. Did Detective Agostini ever raise any concerns with you
12 about Mr. Alston's credibility?

13 A. Detective Agostini and I spoke about Mr. Alston, about
14 Mr. Alston's criminal past, which would not only have to be
15 brought before a trial jury at some point, but should give
16 everybody cause to sit back and evaluate the witness' testimony
17 to see if what you're being told can be relied upon. To that
18 extent, Detective Agostini and I I'm sure discussed Mr. Alston
19 and whatever his testimony would have been.

20 Q. Was the grand jury ever given that opportunity?

21 MR. ZUCKERMAN: Objection.

22 MR. JOSEPH: I'll rephrase.

23 Q. Was the grand jury ever informed that Terrence Alston had
24 lied?

25 MR. ZUCKERMAN: Objection.

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1 THE COURT: Overruled

2 A. Counselor, I think I've answered that

3 Q. Was the grand jury ever told that Terrence Alston lied
4 about Johnny Baker selling plaintiff a .22 caliber gun?

5 A. Johnny Baker was not part of the grand jury presentation,
6 as far as I can remember, and every witness who was put before
7 a grand jury, police, assistant district attorneys, civilian,
8 if you wanted to ask every single person at some point in their
9 lives, they have lied

10 Q. Did the grand jury know that Mr. Alston had lied about
11 selling this plaintiff a gun of the same caliber used to kill
12 the victim, yes or no?

13 A. I don't think that information about the gun being sold was
14 put before the grand jury as I sit here today. If it was,
15 counsel, please show me because I don't remember that.

16 THE COURT: I think he's asking, did you tell the
17 grand jury that?

18 THE WITNESS: Did I tell the grand jury about somebody
19 lying about a name, about evidence that wasn't put before them?
20 No, I did not.

21 Q. In fact, in the lying, Mr. Alston was falsely implicating
22 Johnny Baker in criminal activity, correct?

23 MR. ZUCKERMAN: Objection.

24 THE COURT: Sustained.

25 Q. Ma'am, on the date of this murder Terrence Alston was

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Scaccia - direct

1 actually in jail, correct?

2 A. Correct.

3 Q. And he had been there for some time, isn't that correct?

4 A. Yes, it is.

5 Q. Did Mr. Agostini ever raise any concerns with you that
6 Terrence Alston was playing games to get out of jail?

7 A. I don't recall that offhand, no. Again, it's not uncommon
8 that someone who is in jail wants to get out of jail.

9 Q. Did he ever raise any concerns with you that Mr. Alston was
10 making up stories that weren't true to get out of jail?

11 A. No, counsel. My decision to put Mr. Alston in the grand
12 jury was my decision. It had nothing to do with Detective
13 Agostini or what he thought about Mr. Alston or anything else.
14 It is the DA's call as to who to put before a grand jury, when,
15 and why.

16 Q. Can you give me a straight answer, ma'am?

17 MR. ZUCKERMAN: Objection.

18 A. If you ask me a pointed question, counselor, I will.

19 Q. Yes or no, did Detective Agostini ever express any concerns
20 to you that Mr. Alston was making up stories to get out of
21 jail?

22 A. I don't recall that conversation, no.

23 Q. Was Mr. Alston in fact released from jail in exchange for
24 his testimony against the plaintiff?

25 A. Yes, he was.

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1 Q. And that was before Anthony Manganiello was arrested in
2 April of 2001, correct?

3 A. I don't remember what day Mr. Alston testified in respect
4 to when Mr. Manganiello was arrested, but it had to be close in
5 time because once Mr. Manganiello was placed into custody my
6 time obligations would have begun running.

7 Q. And isn't it also true that Mr. Alston didn't testify in
8 any other cases except for Anthony Manganiello's?

9 A. Mr. Alston only testified at the grand jury stage of
10 Mr. Manganiello's case because he was dead by the time the
11 trial took place.

12 Q. But he did not testify against any other criminal
13 defendants, isn't that right?

14 THE COURT: To your knowledge.

15 A. To my knowledge, no.

16 Q. Ma'am, after Mr. Alston agreed to testify before the grand
17 jury, did you take over the prosecution of Mr. Alston's
18 criminal matters?

19 MR. ZUCKERMAN: Objection, your Honor.

20 THE COURT: Sustained.

21 Q. Were you ever made aware by Mr. Agostini that Mr. Alston
22 did not want witnesses whom he was producing interviewed
23 outside of his presence?

24 A. I don't know what witnesses Mr. Alston was producing other
25 than Mr. Damon, who Mr. Alston asked to be present while he

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1 introduced Mr. Damon to myself and the detective; and then once
2 the introduction was made, Mr. Alston was no longer part of any
3 interview that I conducted with my witness.

4 Q. Were you ever informed by Mr. Agostini that Mr. Alston had
5 gotten mad at him --

6 A. Had what?

7 Q. Were you ever made aware by Mr. Agostini that Terrence
8 Alston got mad at him for interviewing Johnny Baker?

9 A. I don't think Detective Agostini would care if Mr. Alston
10 was mad at him.

11 MR. ZUCKERMAN: Objection, your Honor.

12 THE COURT: Sustained.

13 Q. By the way, ma'am, were there any documents that were not
14 provided to you until the last day of the People's case during
15 Anthony Manganiello's criminal trial?

16 MR. ZUCKERMAN: Objection, your Honor.

17 THE COURT: I'll sustain the objection.

18 Q. I show you what's been marked for identification as Exhibit
19 13.

20 THE COURT: How much more of this, Mr. Joseph?

21 MR. JOSEPH: Hopefully, about 60 seconds.

22 Q. Do you recognize that document, ma'am?

23 A. This appears to be handwritten notes by the crime scene
24 detective in the case whose name I don't know as I sit here.

25 Q. And when did you see that document for the first time?

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Scaccia - direct

1 MR. ZUCKERMAN: Objection, your Honor.

2 THE COURT: It's 13.

3 MR. JOSEPH: 13 is in.

4 THE COURT: If it was redacted it may be in, but only
5 if it was redacted, and then I thought I would admit it,
6 assuming the detective would testify, which she has.

7 THE WITNESS: You want to see it?

8 THE COURT: No. I've seen it. Thanks. Doesn't look
9 redacted.

10 MR. JOSEPH: I am not sure what your Honor wanted
11 redacted.

12 THE COURT: I am not sure either because I don't want
13 to start looking at it to tell. I thought we went over it
14 before. And the ruling was, if Agostini testifies and it was
15 redacted it was in, but let's hear the question.

16 Q. Without telling us what the contents of that document are,
17 can you tell me when you saw that document for the first time?

18 A. I have no idea.

19 Q. If it helps you remember, take a look at page, deposition,
20 page 95.

21 A. I don't have my deposition.

22 Q. I am going to hand it to you now. 95, line 20.

23 For the record, what you have in front of you is
24 Exhibit 13, was also marked as Exhibit 5 of the deposition.
25 I'll show you that as well. If you could read to yourself that

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Scaccia - direct

1 portion of your testimony.

2 A. I'm sorry, counsel, line 20?

3 Q. Page 95, line 20 through page 96, line 1.

4 A. Okay. Go ahead.

5 Q. Has your recollection been refreshed as to when you saw it
6 for the first time?

7 MR. ZUCKERMAN: Your Honor, I object.

8 THE COURT: Overruled. It's a yes or no question.

9 A. Actually, no.

10 MR. JOSEPH: In that case, I have no further
11 questions.

12 THE COURT: Any cross?

13 MR. ZUCKERMAN: Yes, your Honor. If we are going to
14 take a morning break, would this be a good opportunity to take
15 that?

16 THE COURT: Yes, I suppose that's fine. Why don't we
17 take ten minutes, ladies and gentlemen, and we will see you at
18 10 after 12.

19 (Recess)

20 THE COURT: As I told the lawyers and the parties, the
21 young men and women who are here are all summer associates in a
22 large New York law firm who frequently are taken to a courtroom
23 to see what it looks like and what's going on and that's why
24 they are here. Go right ahead.

25 MR. ZUCKERMAN: Thank you, your Honor.

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Scaccia - direct

1 CROSS-EXAMINATION

2 BY MR. ZUCKERMAN:

3 Q. ADA Scaccia, what's your present position?

4 A. I'm currently director of gang prosecutions for the Bronx
5 District Attorney's Office.6 Q. How long have you been a prosecutor with the Bronx District
7 Attorney's Office?

8 A. August 26 it will be 17 years.

9 THE COURT: You must have come as a baby.

10 THE WITNESS: Thank you.

11 Q. Approximately how many homicide cases have you presented to
12 grand juries?

13 A. I would say in the hundreds.

14 Q. Did there come a time that you presented this matter to a
15 grand jury?

16 A. Yes, I did.

17 Q. What witnesses did you present to the grand jury?

18 A. I believe I called Mr. Terrence Alston, Walter Cobb, Chris
19 Tartone, Detective Agostini, Police Officer Perez, Police
20 Officer Nieves, and I believe there was one other officer by
21 the name of Casciano.

22 Q. Seven witnesses all together?

23 A. That sounds about right.

24 Q. Just very briefly, with respect to each of those witnesses,
25 with respect to Mr. Cobb, could you just summarize what they

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Scaccia - cross

1 testified to, very briefly?

2 A. Mr. Cobb testified that he was a maintenance worker at the
3 location, that he was walking to the building of, I believe the
4 address is 1700 Metropolitan Avenue. He was coming along the
5 side of the building when he had heard two shots and then a
6 pause and then two shots. And as he proceeded to this -- it's
7 not really a basement door, but you have to go down about three
8 or four stairs to enter into the basement area of the location.

9 As he was going in there to swipe that door to open
10 it, Mr. Manganiello came from within the basement, pulling the
11 door open and coming out, Mr. Cobb said to him, did you hear
12 that? And he, being Mr. Manganiello, responds, yeah, you go
13 this way and I'll go that way. As I sit here today I don't
14 remember which way Mr. Cobb says he pointed, but that
15 Mr. Manganiello goes off in a direction and that Mr. Cobb goes
16 into the basement to go to the garbage room or the incinerator
17 to go about his duties. He testified about a telephone Verizon
18 man being down in the basement and asking about access to a
19 room. And he -- you want me to stop?

20 Q. Finish your answer.

21 A. Mr. Cobb testifies about walking back and forth doing
22 various things. And he notices at some point what I believe he
23 calls the carriage room, inside of the carriage room. He says
24 he sees what appears to be, at first, rags on the ground. As
25 he approaches, he realizes that it's not rags. It's in fact

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Scaccia - cross

1 who he later learned to be Mr. Acosta lying on the ground. He
2 can hear gurgling and he sees blood coming from his head. He
3 runs outside and tells the Verizon guy: Hey, in that door we
4 opened there is a body in there, and he begins notifying the
5 police, he calls the police, and he remains on the scene until
6 the police get there, essentially.

7 Q. And you testified on Mr. Joseph's examination as to what
8 Mr. Alston testified to, is that correct?

9 A. Yes.

10 Q. Anything that you would add to that?

11 A. Not that I can recall offhand, no.

12 Q. How about Mr. Tartone, what did he testify to?

13 A. That he was either an owner or an employee of a nearby
14 pizza shop, that he had seen Mr. Manganiello in there over a
15 period of time. He would see him like once a month or whatever
16 when he came in to eat. And on one particular date, I don't
17 know how long before the homicide it was, but some time prior
18 to the homicide, not too long before, he had overheard
19 Mr. Manganiello speaking to an unknown male asking him if he
20 knew where he could get a gun, meaning where Mr. Manganiello
21 could get a gun.

22 Q. Just one question about Mr. Alston. When you spoke to
23 Mr. Alston, did he describe Mr. Manganiello's appearance?

24 A. On the day that he spoke to him, yes, he gave a physical
25 description of him.

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Scaccia - cross

1 Q. You said you presented Detective Agostini to the grand
2 jury, is that correct?

3 A. Yes.

4 Q. Could you just briefly summarize Mr. Agostini's grand jury
5 testimony, briefly?

6 A. Detective Agostini testified -- the main purpose of
7 Detective Agostini's testimony was he did what is called the
8 body identification, meaning every time you present a case to
9 the grand jury you have to be able to show that the person who
10 was either observed dead or injured at a scene was in fact the
11 same person who was later brought to the morgue and had an
12 autopsy performed on them.

13 So Detective Agostini saw Mr. Acosta, I believe, if
14 not at the scene, definitely at the hospital before he expired,
15 and then was able to say, after going and seeing his remains at
16 the medical examiner's office, that they were in fact one in
17 the same person.

18 Q. And you presented Officer Nieves to the grand jury,
19 correct?

20 A. Yes.

21 Q. Just, again, briefly, very briefly summarize Officer
22 Nieves' testimony.

23 A. I believe Officer Nieves said --

24 THE COURT: It doesn't matter. We have had her
25 testimony. Is there anything special you have in mind so we

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Scaccia - cross

1 shouldn't have to go through each testimony?

2 MR. ZUCKERMAN: No, your Honor.

3 Q. Other than the persons that you presented to the grand
4 jury, did you interview other witnesses?

5 A. Yes.

6 Q. Do you have discretion in determining who to present to a
7 grand jury? Do you have discretion in deciding what witnesses
8 to present to a grand jury?

9 A. I have discretion in deciding what witnesses the People
10 will call if a defense attorney or a defendant wishes to
11 testify before the grand jury, they are absolutely afforded
12 that right. If they have witnesses they want to present to a
13 grand jury, it's my obligation to ask a grand jury panel if
14 they wish to hear from those witnesses.

15 Q. Did that ever happen in the Manganiello case?

16 MR. JOSEPH: Objection.

17 THE COURT: You can answer yes or no.

18 A. No.

19 THE COURT: Doesn't happen in the federal court, by
20 the way, just giving you another term with a legal connection.
21 It's really something that the state provides that the federal
22 grand jury laws do not.

23 Q. Did there come a time that the grand jury voted to indict
24 Mr. Manganiello?

25 A. Yes.

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Scaccia - cross

1 Q. Mr. Manganiello was acquitted of the charges against him,
2 correct?

3 A. At trial, yes, he was.

4 Q. Despite the acquittal, do you believe that there was
5 reasonable cause to have prosecuted Mr. Manganiello?

6 MR. JOSEPH: Objection. It's for the jury to
7 determine.

8 THE COURT: I'll sustain the objection. The grand
9 jury voted for the indictment.

10 Q. Did Detective Agostini in any way pressure you to bring
11 this prosecution against Mr. Manganiello?

12 A. No.

13 Q. How about Detective Martinez?

14 A. No.

15 Q. How about Detective Abate?

16 A. No.

17 Q. How about Officer Nieves?

18 A. No.

19 Q. How about Officer Perez?

20 A. No. Officers have very little, if anything, to do with
21 what gets presented to a grand jury other than asking them to
22 testify in it. It's not their decision.

23 Q. Whose decision was it to prosecute Mr. Manganiello?

24 A. The office of the Bronx district attorney.

25 MR. ZUCKERMAN: Nothing further, your Honor.

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Scaccia - cross

1 THE COURT: Anything, Mr. Joseph?

2 MR. JOSEPH: Yes, your Honor.

3 REDIRECT EXAMINATION

4 BY MR. JOSEPH:

5 Q. I believe you just testified it was the decision of the
6 Bronx district attorney to prosecute Mr. Manganiello, correct?

7 A. The Bronx District Attorney's Office, yes.

8 Q. On the felony complaint is there a signature of a Bronx
9 district attorney? Let me show you Exhibit 24.

10 A. You don't have to show me. Assistant district attorneys do
11 not swear out felony complaints, sir.

12 Q. And Mr. Agostini swore out the federal complaint in this
13 case, correct?

14 A. That has nothing to do --

15 THE COURT: Come on. Let's not make this any longer.
16 Just answer the question so we --

17 A. Detective Agostini swore out the complaint. If that's his
18 signature that's on it, then he is the one, yes.

19 Q. Isn't it true that a defendant, criminal defendant, is not
20 present while the actual grand jury proceedings are going on
21 unless he's testifying?

22 A. Correct. If he exercises his right to testify, he's in
23 there talking to the grand jurors.

24 Q. Otherwise, he has no right to be there, correct?

25 A. Correct.

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Scaccia - redirect

1 Q. A criminal defendant is not told in advance what witnesses,
2 if any, will be presented to a grand jury, correct?

3 MR. ZUCKERMAN: Objection.

4 THE COURT: Sustained.

5 Q. And during the grand jury proceedings isn't it also true
6 that a criminal defendant or his lawyer doesn't have the right
7 to ask any questions of any witnesses?

8 MR. ZUCKERMAN: Objection.

9 THE COURT: Sustained.

10 Q. By the way, was this grand jury ever informed that
11 Mr. Alston was let out of jail in exchange for his testimony?

12 MR. ZUCKERMAN: Objection.

13 THE COURT: I'll allow that likelihood that the answer
14 is sort of clear.

15 A. No.

16 Q. And when Mr. Alston gave Mr. Manganiello's physical -- at
17 the point in time when Mr. Alston gave a physical description
18 of Anthony Manganiello, was that after he had met with
19 Detective Agostini?

20 THE COURT: If you know.

21 A. I don't know.

22 MR. JOSEPH: Nothing further.

23 THE COURT: You're excused.

24 MR. ZUCKERMAN: One question, your Honor.

25 RECROSS EXAMINATION

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Scaccia - recross

1 BY MR. ZUCKERMAN:

2 Q. With respect to the felony complaint, who drafts the felony
3 complaint?

4 A. Whatever assistant is working in the complaint room.

5 Q. Someone from the district attorney's office?

6 A. Yes.

7 MR. ZUCKERMAN: Thank you. No further questions.

8 THE COURT: Basically, however, they do it in
9 conjunction with the detective who is going to sign it, I
10 trust?11 THE WITNESS: Yes. The detective would bring an
12 arrest to the district attorney's office and then the district
13 attorney's office prepares the paperwork that would now
14 initiate legal action.15 THE COURT: And the complaint would be discussed with
16 the detectives so that the complainant would know what to put
17 in it?

18 THE WITNESS: Yes.

19 THE COURT: You're excused.

20 MR. ZUCKERMAN: One second, your Honor. One question,
21 your Honor.

22 THE COURT: You had one question?

23 MR. ZUCKERMAN: One more, if I can.

24 RECROSS EXAMINATION

25 BY MR. ZUCKERMAN:

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Scaccia - recross

1 Q. Did the presiding judge in the criminal proceedings know
2 about the agreement between the district attorney and
3 Mr. Alston?

4 A. I believe that all of the judges involved in the pendency
5 of the case knew about that.

6 THE COURT: That's it. Thanks. Bye.

7 (Witness excused)

8 THE COURT: What's next, Mr. Joseph?

9 MR. JOSEPH: May it please the Court, the plaintiff
10 calls Mary D'Andrea.

11 THE COURT: This is sort of a kaleidoscope in terms of
12 how long this is going to go on. But if I'm right as to what I
13 think this kaleidoscope shows, there are two more witnesses for
14 the plaintiff and there is only maybe one or two witnesses or
15 maybe none for the defense, so we are moving closer and closer
16 to the end of this saga.

17 MARY D'ANDREA,

18 called as a witness by the Plaintiff,

19 having been duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. JOSEPH:

22 Q. Ma'am, are you currently employed?

23 A. I'm sorry?

24 Q. Are you currently employed?

25 A. Yes.

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D'Andrea - direct

1 Q. Where?

2 A. Bronx District Attorney's Office.

3 Q. Were you so employed in 2001?

4 A. Yes.

5 THE COURT: Were you an assistant district attorney?

6 THE WITNESS: Yes, your Honor.

7 Q. Let me jump to the chase here, ma'am. I'll show you --

8 MR. JOSEPH: Judge, I ask to introduce what's been
9 marked as Exhibit 46.10 MR. ZUCKERMAN: Your Honor, we object to the so-called
11 supplemental affirmation being introduced into evidence.

12 THE COURT: I think it's in over your objection.

13 MR. ZUCKERMAN: Note our objection for the record.

14 (Plaintiff's Exhibit 46 received in evidence)

15 Q. Ma'am, I am going to show you --

16 THE COURT: That doesn't mean that I find it
17 particularly relevant, just not enough for me to deny its
18 admission at this juncture. So tread lightly.19 MR. JOSEPH: Very well, your Honor. I will be brief,
20 I believe.21 Q. Ma'am, I am going to show you what's been marked as Exhibit
22 46. Do you recognize this document?

23 A. Yes.

24 Q. What do you recognize it to be?

25 A. It's a supplemental affirmation, a motion that I wrote -- I

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D'Andrea - direct

1 don't see a date on it.

2 Q. Was it an affirmation that you offered to the Court during
3 the prosecution of Anthony Manganiello?

4 A. Yes.

5 Q. And did the Court direct the district attorney's office to
6 identify what deal, if any, had been made with Terrence Alston?

7 MR. ZUCKERMAN: Objection.

8 A. I don't recall.

9 THE COURT: I overrule the objection. I thought we
10 are going to put it in.

11 MR. JOSEPH: It's in. I'm just giving the jury some
12 context of how the document came about.

13 THE COURT: Let's hope you get it soon.

14 Q. Take a look at the first page, second paragraph, ma'am.

15 A. Yes.

16 Q. Did the Court, the Bronx Supreme Court, direct the district
17 attorney's office to provide an affirmation identifying what
18 deal, if any, had been made with Terrence Alston?

19 MR. ZUCKERMAN: Objection, your Honor.

20 THE COURT: Overruled. It's a yes or no question.

21 A. Yes.

22 Q. And, ma'am, did you sign the exhibit that you have in front
23 of you?

24 A. Yes.

25 Q. And did you represent to the Court that the deal was not

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D'Andrea - direct

1 made to secure Terrence Alston's testimony against Anthony
2 Manganiello?

3 MR. ZUCKERMAN: Objection, your Honor.

4 THE COURT: Overruled.

5 A. I don't understand the question.

6 Q. Let me make it very simple. Ma'am, can I see the document
7 for a second, please.

8 Ma'am, could you just read for us the last sentence on
9 paragraph No. 3 of your affirmation?

10 A. The agreement was not made to ensure his testimony in this
11 case but rather to set up parameters regarding his parole and
12 activities with law enforcement.

13 Q. And did you also represent to the Court that Mr. Alston was
14 working on unrelated drug cases with Detective Derrick Parker?

15 MR. ZUCKERMAN: Objection, your Honor.

16 THE COURT: Overruled.

17 A. Yes.

18 Q. Did you ever speak with Detective Derrick Parker prior to
19 making this representation?

20 A. No.

21 Q. Were you aware that Mr. Parker was not working on any drug
22 cases at all during the relevant time period?

23 MR. ZUCKERMAN: Objection, your Honor.

24 THE COURT: Sustained. If she hadn't talked to him,
25 how would she know what he was working on.

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D'Andrea - direct

1 MR. JOSEPH: Very well, your Honor.

2 Q. Did you also represent that Mr. Alston, on page 2, the
3 fourth paragraph, second sentence, that Mr. Alston's testimony
4 was not in any way a condition precedent to any deal made in
5 this case?

6 A. Yes.

7 MR. ZUCKERMAN: Objection, your Honor.

8 THE COURT: Overruled.

9 Q. Ma'am, were you ever made aware that Terrence Alston was
10 let out of jail specifically in exchange for his testimony
11 against Anthony Manganiello?

12 MR. ZUCKERMAN: Objection.

13 THE COURT: Sustained.

14 MR. JOSEPH: Nothing further.

15 THE COURT: Anything, Mr. Zuckerman?

16 MR. ZUCKERMAN: No questions, your Honor.

17 THE COURT: You're excused. Thank you very much.

18 (Witness excused)

19 THE COURT: What's next?

20 MR. JOSEPH: I believe our sole remaining witness is
21 Dr. Latif, who we have scheduled for Monday morning. We
22 respectfully, unless the defendant has a witness, respectfully
23 request a continuance until Monday morning.

24 THE COURT: Let's go. We will keep your case open.
25 We will go on to the defendants' case.

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1 MR. ZUCKERMAN: Your Honor, the only witness for the
2 defendants would be Matias Colon, and Mr. Colon had a doctor's
3 appointment for today. He will be here Monday morning as well.

4 THE COURT: My hope is that testimony will conclude
5 before noon on Monday and that we will have summations and
6 charge on Monday and probably that will work. If not, we
7 certainly will have the conclusion of the testimony plus the
8 summations.

9 In any event, the case should be yours late Monday or
10 first thing Tuesday morning.

11 Have a good weekend. Do not discuss the case among
12 yourselves and we will see you Monday morning at 9:30. Have a
13 good weekend.

14 (Jury not present)

15 THE COURT: Let me talk for a moment about summations.
16 In this case the plaintiff has the burden of proof. He will go
17 last and the defendant will sum up first.

18 How much time do you choose to use for that purpose at
19 this juncture, Mr. Zuckerman and company?

20 MR. ZUCKERMAN: I'm sorry. Is there a time limit?

21 THE COURT: There will be if you ask for too much.

22 MR. ZUCKERMAN: I would say one hour.

23 THE COURT: Mr. Joseph?

24 MR. JOSEPH: Approximately the same, Judge. I speak
25 fast. I think I probably can get through it sooner.

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1 THE COURT: If you do less, that's a wonderful thing.
2 However, you will know it if you go over it.

3 As I think I told you, the last aspect of the charges
4 that we went through today, that is, the damage aspect, we
5 didn't really conclude, so if there are any changes or
6 additions that you think ought to be included, please write me,
7 preferably before Monday morning, since you now have the
8 afternoon to play, because I really would like to be able to
9 have the charge. If your witnesses only take an hour or two in
10 the morning, we should be able to have summations at or about
11 lunchtime and sum up and charge in the late afternoon.

12 MR. ZUCKERMAN: Your Honor, with respect to damages,
13 there is one jury instruction that we had proposed that I
14 didn't see in there. That deals with mitigation for failure of
15 plaintiff to mitigate damages. I didn't see that instruction
16 in the copy that your Honor provided to us this morning, and
17 that's certainly one that, given the plaintiff's testimony,
18 that he didn't look for a job for two years, would clearly be
19 appropriate, and we would request that the mitigation of
20 damages jury instruction be provided to the jury if it's not
21 already contained in the proposed jury charge.

22 THE COURT: I don't think it's there. But in that
23 area, as far as I'm concerned, you're welcome to submit
24 anything you'd like.

25 MR. ZUCKERMAN: We did with our proposed jury

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1 instructions.

2 THE COURT: What I will do is bring it again to my
3 attention. I have no idea what Dr. Latif will testify. She
4 may say he can't work again, in which case it would probably be
5 unlikely that he would be able to mitigate. You'd like the
6 charge anyway.

7 MR. ZUCKERMAN: Right. We are still entitled to argue
8 to the jury that he could work and that he hasn't looked for
9 work.

10 THE COURT: Do you have some testimony to that effect?
11 I have no idea what Dr. Latif is going to say. Do you have any
12 testimony that says he could say work other than Mr.
13 Zuckerman's hope or view, or whatever you call it?

14 MR. ZUCKERMAN: I think it's a reasonable inference
15 based upon -- let's put it this way. So far during this trial
16 there has been no testimony, no competent testimony that he
17 can't work. He said he can't work.

18 THE COURT: That's why I thought between his testimony
19 and the psychiatrist, we may be able to come to rapprochement,
20 but you don't get it automatically. The fact that you've
21 included it is helpful, but doesn't mean very much.

22 MR. JOSEPH: Defendants have not exchanged any
23 vocational expert reports or even so-called independent
24 treating medical examination that that differs in any way from
25 Dr. Latif's conclusion. As such, there is no evidence upon

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1 which they could base that requested charge. That's
2 plaintiff's position.

3 MR. ZUCKERMAN: Just because Dr. Latif says something
4 doesn't mean it's true. We are entitled to cross-examine and
5 present --

6 THE COURT: You're going to be able to do all of that.
7 And if you succeed, again, I don't know what she is going to
8 say, Mr. Zuckerman. If it turns out that in fact there is an
9 area where mitigation seems appropriate, we will use your
10 charge.

11 MR. ZUCKERMAN: Thank you, your Honor.

12 THE COURT: Have a good weekend, everybody.

13 MR. ZUCKERMAN: Your Honor, 10:00 on Monday, 9:30 on
14 Monday?

15 THE COURT: Yes, 9:30.

16 (Adjourned to Monday, June 23, 2008, at 9:30 a.m.)

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86NMMANT

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

3 ANTHONY MANGANIELLO,

4 Plaintiff,

5 v.

07 Civ. 3644 (HB)

6 LUIS AGOSTINI, individually
7 and as a New York City Police
8 Detective; SHAWN ABATE,
9 individually and as a New York
10 City Police Detective; ALEX
11 PEREZ, individually and as a
12 New York City Police Officer;
13 MIRIAM NIEVES, individually
14 and as New York City Police
15 Officer; and ROBERT MARTINEZ,
16 individually and as a New York
17 City Police Officer,

18 Defendants.
19 -----x

20 New York, N.Y.
21 June 23, 2008
22 9:30 a.m.

23 Before:

24 HON. HAROLD BAER, JR.,

25 District Judge

26 APPEARANCES

27 OSORIO & ASSOCIATES
28 Attorneys for Plaintiff
29 BY: MICHAEL JOSEPH

30 MICHAEL A. CARDOZO, Corporation Counsel
31 for the City of New York
32 Attorney for Defendants
33 BY: MARK ZUCKERMAN
34 AMY OKEREKE

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1 (Trial resumed)

2 (Jury not present)

3 THE COURT: Good morning, everybody. I gather the
4 plaintiff wants a word before the jury comes in.

5 MR. JOSEPH: Judge, it's very minor. I just noticed
6 in some of the doctor's medical records and the chart that she
7 makes a reference to things she spoke about with plaintiff
8 concerning the brother's arrest, my client's brother's arrest.
9 My suggestion how to handle it, we will put the documents and
10 we will redact it prior to being published to the jury. I want
11 to make the Court aware of that.

12 THE COURT: Does that give you any pause?

13 MR. ZUCKERMAN: I'm sorry, your Honor.

14 THE COURT: Say it again.

15 MR. JOSEPH: Judge, my suggestion is that since the
16 doctor is about to testify, I've instructed her, as per the
17 Court's ruling, not to mention that plaintiff's brother or
18 family members were arrested. And we will put our references
19 in her notes. My suggestion is that we put the notes in and
20 then redact them prior to them being published to the jury. I
21 will work with counsel to make any redactions he feels are
22 appropriate.

23 MR. ZUCKERMAN: That's okay, your Honor. Also, there
24 are documents there relating to an application for Medicare or
25 Medicaid by the plaintiff. I think that's irrelevant, too, and

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1 shouldn't be published to the jury. His application for
2 Medicare has nothing to do with what we are trying here, and I
3 would request those be redacted as well.

4 MR. JOSEPH: Judge, I agree with counsel. I have no
5 problem redacting any portion or a reference to Medicaid
6 although though since the documents do express some of the
7 doctor's opinions I think the documents themselves, which
8 express her opinions, can be put in and we can certainly redact
9 social security, Medicare, whatever, any portion of the
10 documents that makes reference to those entities.

11 THE COURT: That sounds fine to me. We certainly want
12 it to be relevant. I'll be glad to monitor the redactions.

13 MR. JOSEPH: Yes, your Honor.

14 THE COURT: You want to produce her?

15 MR. JOSEPH: She is right here.

16 THE COURT: Or him.

17 I gather that you have no witnesses, the defendants,
18 is that true?

19 MR. ZUCKERMAN: Your Honor, that's correct.

20 THE COURT: We are ready when you're ready.

21 (Jury present)

22 REHANA LATIF,

23 called as a witness by the Plaintiff,

24 having been duly sworn, testified as follows:

25 THE COURT: Ladies and gentlemen, I hope you all had a

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1 good weekend. I think even better news, I think, is that this
2 will be the last witness for either side so that while we give
3 the parties a little minute or two to regain their composure,
4 we will then go right into summations. It just depends on how
5 long this witness takes before we take a short adjournment and
6 start summations. Go ahead.

7 MR. JOSEPH: Thank you, your Honor.

8 DIRECT EXAMINATION

9 BY MR. JOSEPH:

10 Q. Doctor, could you give us the benefit of your educational
11 experience?

12 A. I'm a medical graduate from Pakistan. I came to the United
13 States and I did my national medical boards. And I did my
14 residency in New York, first, at Stony Brook Hospital in
15 medicine, surgery, and then I did my psychiatry residency at
16 Harlem Hospital and Creedmor Psychiatric Center.

17 Q. Doctor, are you currently licensed to practice medicine in
18 the State of New York?

19 A. Yes, I am.

20 Q. And for how long have you been licensed?

21 A. Fifteen, 16 years.

22 Q. And do you limit your practice to any specialty?

23 A. Yes. I'm a psychiatrist.

24 Q. Doctor, is Anthony Manganiello a patient of yours?

25 A. Yes.

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Latif - direct

1 Q. And did you see him for the first time on February 15,
2 2001?

3 A. Yes.

4 Q. And what were your observations at that point in time?

5 A. When he came to my office, he was very shaky, he was very
6 sweating, trembling, was not able to give me a coherent history
7 when I asked him why he was there. He just said something
8 terrible has happened, I can't talk about it. I can't talk
9 about it.

10 Q. And what symptoms, if any, did he present with?

11 A. He was presenting with -- he told me that he has poor
12 sleep, poor memory, poor concentration, he's unable to cross
13 streets, he's very afraid of coming out of his house, and this
14 was associated with chest pain, palpitations, numbness feelings
15 of hands and arms.

16 Q. What is the significance of palpitations and numbness in
17 the arms?

18 A. These symptoms are usually anxiety symptoms. And when
19 anxiety symptoms present with palpitations, shortness of
20 breath, chest pain and fear of something bad is going to happen
21 means that they are experiencing panic attacks, and that's what
22 I felt that he was experiencing.

23 Q. Doctor, at that point did you come to the opinion as to the
24 severity of his medical condition?

25 A. Moderate to severe symptoms.

86NMMANT

Latif - direct

1 Q. What does that mean?

2 A. It means on a scale from zero to ten when we say ten was
3 the worst, he was at least seven and a half to eight.

4 Q. At that point did you come to a functional diagnosis?

5 A. Yes. He was experiencing symptoms of depression, as well
6 as symptoms of anxiety disorder.

7 Q. Can you tell us what those conditions -- can you give us a
8 brief description of what those conditions are?

9 A. Those conditions are medical conditions that are created by
10 severe stress or chemical imbalance created by severe stress.
11 And he was presenting with these symptoms prior -- as soon as
12 he came to see me, prior to coming to see me.

13 Q. What is anxiety disorder? What is an anxiety disorder?

14 A. Anxiety disorder that presents with tremblingness,
15 sweatiness, chest pains, and palpitations.

16 Q. How about major depression?

17 A. Major depression is loss of concentration, loss of memory,
18 poor memory, poor energy level, fear of death or constant
19 thoughts of death, or lack of energy, basically.

20 Q. Doctor, what, if anything, did you do to treat
21 Mr. Manganiello's symptoms or condition?

22 A. He was severely anxious, so I had to give him something
23 right away, which was a benzodiazepine. The medication that I
24 gave him was Klonopin to immediately relieve these symptoms
25 because these symptoms can be very distressing that can cause a

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Latif - direct

1 person to not be able to function at all in any capacity.

2 Q. Doctor, have you continuously treated Mr. Manganiello from
3 February 15, 2001 through the present?

4 A. Yes, I have been treating him.

5 MR. JOSEPH: At this point, Judge, I would like to
6 move into evidence Exhibit 56.

7 MR. ZUCKERMAN: Your Honor, over our prior objection
8 and subject to the redactions we discussed.

9 THE COURT: Very well.

10 (Plaintiff's Exhibit 56 received in evidence)

11 Q. Doctor, I show you what's been marked as Exhibit 56 in
12 evidence, a copy of your chart.

13 Doctor, could you turn to your 7/13/01 note.

14 THE COURT: While she is waiting, just, again, to
15 finish up your legal education, there is a distinction which is
16 worth understanding between the economist who was an expert who
17 did not have a hands-on role with respect to the plaintiff and
18 his injuries. We are simply giving you his opinion based on
19 his expertise as an economist.

20 And this doctor, who was a treating doctor, who in
21 fact is testifying now actually from the records that she
22 amassed while she was treating the plaintiff, it carries with
23 it some differences, but I will charge you as to those
24 differences. But keep in mind that there is -- I suppose the
25 big difference has to do with the expert because people

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Latif - direct

1 sometimes think the expert's word is gospel. The expert's word
2 is not gospel, but I will charge you on that issue and really
3 has nothing to do with this doctor's testimony as the treating
4 doctor, so we don't have to belabor it.

5 Q. Ma'am, what complaints, if any, did Mr. Manganiello present
6 with on 7/13/01?

7 A. He was anxious, he was resistant to taking medications
8 because the medications I am starting him on were
9 antidepressant and antianxiety medication. Those medications
10 have side effects, which is sexual side effects which he was
11 experiencing at the time, and he didn't like taking it, so he
12 had stopped it.

13 Q. What conditions, though, did he present with or what
14 symptoms?

15 A. I am not sure of your question.

16 Q. On 7/13/01, what symptoms had Mr. Manganiello presented
17 with --

18 THE COURT: Because he stopped taking the drugs or
19 just generally?

20 A. He was resistant to taking the medication because he was
21 experiencing the side effects. And I added another medication
22 to relieve those symptoms, Serzone, which usually improves the
23 sexual dysfunction. And he still continued feeling the same
24 way as he was with the medication, and I understood that he was
25 gaining weight and he was having other problems, so I

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Latif - direct

1 encouraged him to continue taking medication because without it
2 he was completely nonfunctional.

3 Q. Doctor, I want to direct your attention to the October 1,
4 2001 visit. At that point did Mr. Manganiello discuss what, if
5 anything, had brought him to see you or what stress he was
6 undergoing?

7 A. On October 1, he told me that he was having difficulties
8 because at that time he felt comfortable talking about the
9 incidents. Initially, all these times since he came to see me
10 he hadn't spoken anything about what happened. Despite my
11 questioning, he would always not want to talk about it. So on
12 October 1 was the first time he told me that he was falsely
13 accused of killing someone.

14 Q. Doctor, from February 12, 2001 through the present, are
15 there any symptoms that Mr. Manganiello has continued to
16 present with?

17 A. He has shown very slight improvement with medications,
18 despite the fact that I tried several different kinds of
19 medications to improve his energy level, to improve his
20 motivation, to improve his concentration. And it appears that
21 he remains, you know, very limited occupationally, physically,
22 psychologically because he has experienced, you know -- later
23 on he had mentioned at some point that he has lost his
24 girlfriend because of these reasons. He was not able to have a
25 consistent relationship with the woman.

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Latif - direct

1 MR. ZUCKERMAN: Your Honor, I move to strike the
2 portions of the response that are nonresponsive.

3 THE COURT: Stricken.

4 Q. You mentioned psychological limitations. What
5 psychological limitations, if any, has Mr. Manganiello
6 experienced?

7 A. When we say psychological limitations, the functioning of
8 the person on day-to-day level emotionally as well as
9 cognitively. Emotionally means that their mood is okay, they
10 are feeling up to getting up, going to work. And cognitive
11 means being able to pay attention to their work and be able to
12 concentrate and be able to have the energy level to be able to
13 function in day-to-day life. Both of these functions were
14 affected enough to not be able to carry on any kind of work.
15 He remained mostly at home, not did much during that period of
16 time.

17 Q. Doctor, during this period of time did Mr. Manganiello
18 describe any nightmares?

19 A. He mentioned that he was experiencing and reliving the
20 whole traumatic event the way the police sirens affected him.
21 He says that he still feels shaky when he hears the siren,
22 still feels afraid of the handcuffing, also, the incidents when
23 he was taken to be in jail --

24 MR. ZUCKERMAN: Objection, your Honor.

25 THE COURT: I'll sustain the objection. Are you

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Latif - direct

1 reading from your notes or are you just telling us your best
2 recollection of what transpired?

3 THE WITNESS: My best recollection.

4 THE COURT: Let's go on to something else.

5 Q. Doctor, what is Mr. Manganiello's present condition?

6 A. Mr. Manganiello has remained limited in his functioning
7 occupationally, physically, psychologically.

8 Q. Doctor, at this point, do you have a final diagnosis of
9 Mr. Manganiello's condition?

10 A. He suffers from major depression, he suffers from
11 posttraumatic stress disorder, and associated with these
12 symptoms are anxiety symptoms.

13 Q. What is posttraumatic stress disorder?

14 A. Posttraumatic stress disorder is when a person experiencing
15 severe stress or trauma and they do not want to mostly talk
16 about that trauma, they do not want -- they have recollections
17 of those traumas over and over and it ruminates on these
18 recollections. They have nightmares, they have flashbacks, and
19 that is severe enough to incapacitate them to not be able to
20 function normally.

21 Q. Doctor, do you have an opinion within a reasonable degree
22 of certainty as to whether there is a causal relationship
23 between the prosecution for murder and the diagnosis which you
24 made?

25 MR. ZUCKERMAN: Objection, your Honor.

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Latif - direct

1 THE COURT: Overruled.

2 A. Yes, absolutely, because he denied any prior history of
3 having any psychological or any psychiatric problems. He had
4 never seen a psychiatrist before. And I can say for sure that
5 these were the incidents that has caused him to become totally
6 incapacitated.

7 Q. Doctor, do you have an opinion within a reasonable degree
8 of certainty whether his medical condition is causing him to be
9 disabled?

10 MR. ZUCKERMAN: Objection, your Honor.

11 A. Yes.

12 THE COURT: Overruled.

13 A. This is a medical condition that is created by that severe
14 stress.

15 Q. And do you have an opinion as to whether that medical
16 condition is causing Mr. Manganiello to be disabled?

17 MR. ZUCKERMAN: Objection, your Honor.

18 THE COURT: Overruled.

19 A. Yes. It is the medical condition that is created by the
20 severe stress.

21 Q. And, Doctor, do you have an opinion within a reasonable
22 degree of medical certainty as to whether Mr. Manganiello's
23 medical condition is permanent?

24 MR. ZUCKERMAN: Objection, your Honor.

25 THE COURT: Overruled.

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Latif - direct

1 A. Yes.

2 Q. Doctor, why do you feel it's permanent?

3 A. Because of my experience for seven years with this patient,
4 I have noticed that not much has changed, even though he is
5 receiving medication, he is receiving some supportive type of
6 therapy, but nothing much has changed. He constantly ruminates
7 about what his life and career would be like if this has not
8 happened. He had wanted to join --

9 MR. ZUCKERMAN: Objection, your Honor.

10 THE COURT: This is all what she gained from her
11 sessions with plaintiff. She is a treating doctor and relating
12 to us her opinion during the course of that treatment and what
13 it portends. I can't imagine a better treating doctor type of
14 testimony, and I certainly don't understand any of your last
15 ten objections, but it's of no moment since I'm the judge.

16 Go ahead.

17 A. He was constantly concerned about his future, he was
18 constantly concerned about his career. He felt that his life
19 is completely ruined by this incident because now he has a
20 record that nobody will accept him. He worked as a security
21 guard. Now he cannot pursue that career because he has a
22 record. Although he is cleared, but now he has gotten older,
23 he has gained tremendous weight, he has gained -- he has not
24 gained any motivation to improve all this because of this
25 chemical balance that is created as a result of this whole

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Latif - direct

1 incident. It has affected him tremendously.

2 Q. Doctor, what, if anything, about Mr. Manganiello's medical
3 condition is preventing him from being able to, for example,
4 return to security work?

5 A. He is experiencing posttraumatic stress symptoms which
6 means that he does not want to go to the same environment, he
7 cannot be surrounded by sirens of police. Security guard means
8 he will have to call police and he will have to constantly be
9 in association with the same environment. He will not be able
10 to pursue that as a career because he is going to be
11 traumatized again. He will just not function.

12 Q. Doctor, what, if anything, is preventing Mr. Manganiello
13 from pursuing other lines of work?

14 A. The effect that is created by this trauma which has
15 affected his cognitive functioning, which is his concentration,
16 his attention, his level of understanding, lack of energy, I
17 think will prevent him to pursue any career. During my time
18 that I've seen him during this whole period of time I have
19 encouraged him several times to pursue other careers, and he
20 always was not able to give me any reason for me to pursue it
21 enough to be able to do it because I just never saw him
22 motivated enough. He seems to be completely, completely not
23 recognizing that his life has become stagnant. He just
24 presents as a very limited person to me now, at this stage of
25 his life.

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Latif - direct

1 Q. Doctor, do you have a prognosis?

2 A. The prognosis is anywhere from poor to fair, which means
3 very limited functioning.

4 MR. JOSEPH: That's all I have. Thank you, Doctor.

5 THE COURT: Any cross?

6 MR. ZUCKERMAN: Yes, your Honor.

7 CROSS-EXAMINATION

8 BY MR. ZUCKERMAN:

9 Q. Good morning, Dr. Latif.

10 A. Good morning.

11 Q. Mr. Manganiello first came to see you on or about February
12 15 of 2001, correct?

13 A. Correct.

14 Q. And since February 2001, you've seen him off and on, is
15 that correct?

16 A. Yes.

17 Q. And during your treatment of Mr. Manganiello you never
18 consulted with his primary care physician, correct?

19 A. I have obtained some of his, I think, medical records, but
20 not really directly in consultation, no.

21 MR. ZUCKERMAN: Your Honor, I would ask that the
22 witness be directed to answer the question that I asked.

23 MR. JOSEPH: I believe she did.

24 A. No.

25 Q. The answer is no?

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Latif - cross

1 A. No.

2 Q. Now, when Mr. Manganiello first came to see you he told you
3 that he had been a security officer in a Bronx housing complex,
4 correct?

5 A. Yes.

6 Q. And during your treatment of Mr. Manganiello he didn't
7 discuss his relationship with any of his coworkers at that
8 Bronx housing complex, correct?

9 MR. JOSEPH: Objection.

10 THE COURT: Overruled.

11 A. No.

12 Q. In fact, when he first came to see you he kept saying, I
13 can't talk about it, meaning he couldn't talk about the reason
14 that brought him to you in the first place, correct?

15 A. Correct.

16 Q. And this went on for a few months, correct?

17 A. Yes.

18 Q. Then after a few months he told you he was accused of
19 killing someone, correct?

20 A. Yes.

21 THE COURT: I think she had said originally falsely
22 accused.

23 THE WITNESS: Falsely accused.

24 Q. And he told you that the person he was accused of killing
25 was a person he did not even know, correct?

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Latif - cross

1 MR. JOSEPH: Objection.

2 THE COURT: I don't remember that testimony, but you
3 can answer it if that's what you said and I missed it, which is
4 conceivable.

5 A. I don't recall that he said that. I'm sorry.

6 Q. Do you remember your deposition being taken in connection
7 with this matter?

8 A. Yes.

9 Q. Page 46, line 13. Page 46 of your deposition. Do you have
10 a copy of your deposition transcript there?

11 A. No, I don't.

12 Q. At page 46, line 13, you were asked the following questions
13 and you gave the following answers:

14 "Q. Do you know who Mr. Manganiello is accused of killing?

15 "A. He has told me the name of the person, but I don't
16 remember."

17 MR. JOSEPH: Objection. That's a completely different
18 question than counsel asked.

19 MR. ZUCKERMAN: I'm just reading the questions.

20 THE COURT: First of all, the way he is supposed to
21 present it to you is, did you give these answers to these
22 questions. He neglected that predicate. But then he has gone
23 on to read the questions and the answers and then he will ask
24 you if you remember having given these answers to these
25 questions. Why don't we start again.

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Latif - cross

1 MR. ZUCKERMAN: Sure.

2 THE COURT: Hopefully, contextually.

3 MR. ZUCKERMAN: Page 46, line 13:

4 "Q. Do you know who Mr. Manganiello is accused of killing?

5 "A. He has told me the name of the person, but I don't
6 remember.

7 "Q. Do you know what that person's relationship, if any, was
8 to Mr. Manganiello? Did he tell you what the relationship was,
9 whether he was a colleague or a neighbor or stranger or
10 something to that effect?

11 "A. As far as I know, he himself did not know who that person
12 was. As far as I recall, he said, I don't know who that person
13 is, what they are accusing me of.

14 "Q. He didn't know who the victim was?

15 "A. No, he did not know him, as far as I remember. He did not
16 know him or, yes, he did not know that person."

17 Do you remember being asked those questions and giving
18 those answers at your deposition?

19 A. Yes.

20 Q. Mr. Manganiello never gave you the identity of the murder
21 victim, correct?

22 A. No.

23 Q. But he did tell you that someone was trying to frame him,
24 correct?

25 A. Someone was trying to frame him.

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Latif - cross

1 THE COURT: If you don't remember, you don't remember.

2 A. No, I don't remember.

3 Q. And he told you that he didn't carry guns, correct?

4 MR. JOSEPH: Objection. Unless this has some
5 relevance, Judge.

6 THE COURT: I don't know what the relevance is, but
7 she doesn't remember.

8 A. I don't remember that he said that -- he had that
9 discussion or not.

10 Q. On page 54 of your deposition do you remember being asked
11 these questions and giving these answers, page 54, line 17:

12 "Q. Do you know whether or not Anthony Manganiello owned a
13 gun?

14 "A. I don't know whether he owned or not. I don't know when
15 owns a gun or not".

16 MR. JOSEPH: Objection. That's exactly what he said.

17 THE COURT: We have got these eight people who have
18 been sitting here day in and day out. They are going to be
19 able to handle whether there is an inconsistent statement and
20 will it matter and what weight to give it. That's a major
21 concern which they will hear about shortly.

22 MR. JOSEPH: Very well, your Honor.

23 THE COURT: And have heard about already.

24 Q. As Mr. Manganiello's treating psychiatrist, you believed
25 everything Mr. Manganiello told you, correct?

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Latif - cross

1 A. Absolutely.

2 Q. So you took his word for everything that he told you,
3 correct?

4 A. Absolutely.

5 Q. And you can't make a determination about whether he's
6 telling you the truth or whether he's lying, correct?

7 MR. JOSEPH: Objection.

8 THE COURT: That's interesting. Is that really so?
9 Any patient that comes to you and gives you a story that you
10 find unbelievable, you believe anyway?

11 THE WITNESS: I have to believe what the person is
12 telling me. Then I make my judgment whether that coincides
13 with the behavior and with their history or not. But I have to
14 believe that they are telling the truth. I cannot be making
15 judgments that, oh, this person is malingering or making an
16 excuse.

17 Q. During certain sessions that Mr. Manganiello had with you
18 Mr. Manganiello complained of having nightmares and flashbacks
19 of the event, correct?

20 A. Yes.

21 Q. And during the time that Mr. Manganiello has been in
22 treatment with you he has never been suicidal, correct?

23 A. No.

24 Q. No, he hasn't, correct?

25 A. No.

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Latif - cross

1 Q. And when he first came to see you he told you that he was
2 afraid to leave his house, correct?

3 A. Yes.

4 Q. But at some point he was able to leave his house and take
5 care of some minor chores, correct?

6 A. Yes, after medications.

7 Q. And during the time that Mr. Manganiello has been your
8 patient he has missed many of his scheduled appointments,
9 correct?

10 A. Yes. He forgot most of the time.

11 Q. In fact, he has appointments for months at a time, correct?

12 A. Correct.

13 Q. In fact, Mr. Manganiello told you that he just forgot his
14 appointments, correct?

15 A. Yes.

16 Q. And you referred Mr. Manganiello to a therapist but he
17 didn't go, correct?

18 A. Correct.

19 Q. And at the time you started seeing Mr. Manganiello he was
20 36 years old, correct?

21 A. Correct.

22 Q. And since you've been treating him Mr. Manganiello hasn't
23 been motivated to do anything with his life, correct?

24 A. He has not been able to do much.

25 Q. He hasn't been motivated to do anything?

86NMMANT

Latif - cross

1 A. He has not been motivated.

2 Q. And he's not interested in pursuing a career or any
3 employment, correct?

4 A. Correct.

5 Q. Nor is he motivated to go and learn any new skills,
6 correct?

7 A. Correct.

8 Q. And even after his acquittal he hasn't been motivated to do
9 anything with his life, correct?

10 A. Correct.

11 Q. Now, when Mr. Manganiello finally told you that he was
12 accused of murdering someone he told you that the district
13 attorney knew he was innocent but continued to pursue the case,
14 correct?

15 A. Correct.

16 Q. And after he was acquitted he discussed with you his
17 frustration that the police that arrested him would suffer no
18 consequences, correct?

19 A. Correct.

20 Q. And the fact that he didn't want to take medication that
21 impeded sexual functions reflected that he was actually
22 engaging in sexual relations, correct?

23 THE COURT: I don't think she was there.

24 A. Well, when a patient tells me a side effect that is clearly
25 related to the medication, I have to take that into

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Latif - cross

1 consideration. I don't really go and check whether they are
2 really inhibited from having sex because of medication or they
3 are not emotionally not ready to do it. I can't say that. But
4 if they tell me, then I assume that is a side effect of the
5 medication.

6 Q. His complaint reflects that he was actually engaging in
7 sexual relations, correct?

8 MR. JOSEPH: Objection.

9 A. All I know is, he was in a relationship and sexual
10 impediment was an issue.

11 MR. ZUCKERMAN: No further questions.

12 MR. JOSEPH: Two brief questions.

13 REDIRECT EXAMINATION

14 BY MR. JOSEPH:

15 Q. Doctor, was missing appointments a symptoms of
16 Mr. Manganiello's medical condition?

17 A. Absolutely. I said earlier, he was affected cognitively,
18 which means attention, concentration, memory, and forgetfulness
19 is a part of that cognitive dysfunction. He displayed that and
20 his physical condition was also impeded because he had no
21 energy level. His energy level always is very low.

22 MR. JOSEPH: Thank you, Doctor, no further questions.

23 THE COURT: You're excused. Thank you very much.

24 (Witness excused)

25 THE COURT: Mr. Joseph, anything further?

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1 MR. JOSEPH: Judge, we would like to move Exhibit 36
2 into evidence. I believe there is no objection to it.

3 THE COURT: Any objection?

4 MR. ZUCKERMAN: Can I see what 36 is.

5 THE COURT: Me, too. I don't have my list in front of
6 me.

7 MR. ZUCKERMAN: No objection.

8 (Plaintiff's Exhibit 36 received in evidence)

9 MR. JOSEPH: For the record, defense counsel and I
10 entered a stipulation regarding the amount of legal bills paid
11 by Anthony Manganiello. It's been stipulated among myself and
12 Mr. Zuckerman that Anthony Manganiello paid Murray Richman
13 \$85,000 for his legal representation and he paid Richard Ross
14 \$25,000 for his legal representation in this matter.

15 With that, Judge, plaintiff rests.

16 THE COURT: Does the defense have a case it chooses to
17 mount?

18 MR. ZUCKERMAN: Defendants have motions.

19 THE COURT: As you might say, can you try to be
20 responsive to the question?

21 MR. ZUCKERMAN: Defendants rest as well.

22 THE COURT: What generally happens at this juncture is
23 that you listen to motions from one side or the other side or
24 both, and my policy is that I assume and put on the record, as
25 I am now, that each side has made any motions that they could

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1 make and that I have reserved decision on those motions. As a
2 consequence of that ruling, we can move along.

3 Why don't you take a ten-minute recess and we will
4 then have summations. Each summation has been represented as
5 only an hour or less. So let us hope that continues to be the
6 case.

7 (Jury not present)

8 THE COURT: We have made some changes in the charge
9 and we will give you each a copy of the charge and a copy of
10 the verdict sheet that we are planning to use. And I will mark
11 as court exhibits your proposed verdict sheets and all of your
12 requests and any of your errors are presumed errors. As a
13 consequence, you are protected in terms of anything you may
14 have objected to. And at the end of my charge, when I ask you
15 to come up for any additions or corrections, please do not go
16 through the objections that have been marked as court exhibits.
17 Got it?

18 MR. JOSEPH: Yes, your Honor.

19 THE COURT: Did we keep the changes in italics? You
20 should easily find what changes we did make. We agreed with
21 the defendant on occasion and there were no objections -- ten
22 minutes, everybody.

23 (Recess)

24 (Jury present)

25 MR. ZUCKERMAN: Your Honor, if we could just preserve

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1 a few moments after the summation to discuss the jury charge.

2 THE COURT: No. You're up.

3 MR. ZUCKERMAN: Thank you.

4 THE COURT: If we don't have the charge before lunch
5 you're welcome to talk to me about it, but assuming we have
6 time to go right into at least the boilerplate, I don't think
7 we will be talking any more about this. It seems to me I have
8 given you every possible opportunity.

9 MR. ZUCKERMAN: Good morning, ladies and gentlemen of
10 the jury. On behalf of Detective Shawn Abate, Detective
11 Richard Martinez, Detective Luis Agostini, Officer Alex Perez,
12 and Police Officer Miriam Nieves, I want to thank you for
13 taking the time out of your busy lives to hear this case over
14 the last week.

15 On February 12, 2001, Albert Acosta's mortally wounded
16 body was found in the room of 1700 Metropolitan Avenue, which
17 is located in the Bronx. Officer Nieves and Officer Perez,
18 both experienced police officers, responded to an NYPD radio
19 call and went to the scene of the shooting. They were among
20 the first responders to the incident.

21 Officers Nieves and Perez went into the basement and
22 saw Albert Acosta's body lying face down in a darkened room.
23 Officer Perez proceeded to canvass the basement area to
24 determine if any weapons or suspects could be found. Officer
25 Perez then went back outside, using the same door to the

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1 basement from which he had entered a short time earlier.

2 Once he went back outside, Officer Perez ran into a
3 park porter by the name of Walter Cobb. Mr. Cobb told Officer
4 Perez that he was working outside of the basement of 1700
5 Metropolitan Avenue that morning when he heard gunshots coming
6 from inside the building. Mr. Cobb also told Officer Perez
7 that just after hearing the gunshots the basement door flew
8 open and Mr. Manganiello came running outside.

9 As Mr. Cobb and Officer Perez were talking, Mr. Cobb
10 saw Mr. Manganiello for a second time that morning, this time
11 emerging out of a crowd that had formed outside the scene of
12 the incident. Mr. Cobb pointed out Mr. Manganiello to Officer
13 Perez as the person that he had seen leaving the basement just
14 after the shots were fired some time earlier that morning.
15 Officer Perez testified that he observed Mr. Manganiello and
16 that he appeared disheveled with dust similar to what was found
17 in the basement area of 1700 Metropolitan Avenue on his
18 uniform. Officer Perez then gave Mr. Cobb to the NYPD
19 detectives that had arrived on the scene so that Mr. Cobb could
20 be interviewed.

Officer Nieves testified that as she was leaving the basement area Mr. Manganiello was yelling, that's my partner, that's my partner in there. She thought that was odd because at the time the identity of the victim was unknown to her.

25 The undisputed evidence during this trial was that the

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1 NYPD and Parkchester radios were on different frequencies. The
2 situation was so chaotic that the Parkchester dispatcher was
3 even attempting to send Officer Acosta to respond to his own
4 fallen body.

5 Officers Perez and Nieves left the scene of the
6 shooting after about half an hour and resumed their normal and
7 regular patrol duties.

8 Veteran Detective Shawn Abate was one of the
9 detectives from the 43rd Precinct who responded to the scene of
10 the shooting. Detective Abate was lead detective in this
11 matter for all of eight hours while Albert Acosta was still
12 alive. Detective Abate secured the crime scene, canvassed the
13 area, and knocked on doors of persons living near the scene of
14 the shooting. He then returned to the 43rd Precinct and was
15 present for an interview of Anthony Manganiello which I will
16 discuss in just a moment. Detective Abate requested routine
17 laboratory tests on Mr. Manganiello's jacket and laboratory
18 analysis of a bullet found at the scene of the homicide.

19 As you heard during this trial, Mr. Manganiello was
20 interviewed by Detective Agostini and Detective Abate at the
21 43rd Precinct on February 12, 2001. Mr. Manganiello was
22 interviewed because he was working the same tour as Albert
23 Acosta and the detectives thought he might have some
24 information about the shooting.

25 What occurred during that interview was recorded on a

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1 DD5 that was prepared by Detective Agostini. This DD5 is in
2 evidence, actually twice, as Plaintiff's Exhibit 33 and
3 Defendants' Exhibit T. I'd like to read from the DD5 what was
4 recorded about the interview with Anthony Manganiello. He,
5 Mr. Manganiello, attended roll call and saw Albert Acosta. He
6 then states the next time he saw Albert Acosta is when he was
7 laying on the floor at 1700 Metropolitan Avenue in the
8 basement. The undersigned asked him where he was when the call
9 came in, and he stated, by the oval taking a personal. The
10 undersigned, meaning Detective Agostini, asked him if he had
11 any problems with Albert Acosta or if anyone he knows has any
12 problems with him, and Anthony Manganiello would not answer.

13 The undersigned observed Anthony's right index finger
14 with a Band-Aid and asked him, how did he get his finger cut?
15 He stated, lifting up his treadmill. The undersigned asked him
16 if he ran today, and he stated no. The undersigned asked him
17 for his address, and he did not know. The undersigned, again,
18 Detective Agostini, asked him for his phone number and he
19 replied, it is unlisted. The interview stopped when his
20 lawyer, Mr. Manganiello's lawyer, Richard A. Ross, notified the
21 43rd Precinct not to have his client questioned. So the
22 interview is recorded on the DD5 that's in evidence as
23 Defendant's Exhibit T.

24 Later on the day of February 12, 2001, Albert Acosta
25 died. Within the 43rd Precinct it was Detective Agostini's

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1 turn to be assigned to the next homicide. For that reason
2 Detective Agostini became the lead detective with respect to
3 the Acosta homicide, replacing Detective Abate. Detective
4 Agostini began an exhaustive and complete investigation into
5 the Acosta homicide. What Detective Agostini and the more than
6 20 other detectives that worked on this matter did were
7 recorded on DD5s. Ladies and gentlemen of the jury, in this
8 set of exhibits are all the DD5s that are in evidence. Ladies
9 and gentlemen of the jury, you will have the opportunity to
10 review each and every DD5 in evidence prepared concerning this
11 case when you deliberate.

12 What you will see is that NYPD detectives canvassed
13 the neighborhood, they interviewed Parkchester security
14 officers, they interviewed Parkchester maintenance workers,
15 they rang door bells to see if any people had any information
16 that would be helpful to them. They performed vehicle
17 canvasses, they followed every conceivable lead that they had.
18 When you deliberate I invite you to review all of the DD5s that
19 are in evidence concerning this case because they show how
20 exhaustive the investigation into this homicide was.

21 On February 12, 2001, Detective Richard Martinez
22 interviewed Walter Cobb. A DD5 was prepared by Detective
23 Martinez of his interview of Walter Cobb and this DD5 is in
24 evidence twice as well, Plaintiff's Exhibit 1 and Defendant's
25 Exhibit Q, page 2 of Defendant's Exhibit Q.